

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Edward J. Kinsella

92-02139

Name of Respondents

A.G. Edwards & Sons, Inc.
Edward W. Gasper
Robert O'Brien, Sr.

REPRESENTATION

For Claimant, Edward J. Kinsella ("Kinsella"): Jane A. Sirak, Esq.

For Respondents, A.G. Edwards & Sons, Inc. ("A.G.E"), Edward W. Gasper ("Gasper") and Robert O'Brien, Sr. ("O'Brien"): William S. Port, Esq. of A.G.E.

CASE INFORMATION

Statement of Claim filed: June 26, 1992.

Claimant's Submission Agreement signed on: May 21, 1992.

Respondents' joint Statement of Answer filed: August 25, 1992.

Respondent, A.G.E's Submission Agreement and Corporate Acknowledgment signed by Brian C. Underwood on behalf of the firm on: August 21, 1992.

Respondent, Gasper's Submission Agreement signed on: August 13, 1992.

Respondent, O'Brien's Submission Agreement signed on: August 7, 1992.

HEARING INFORMATION

On June 23, June 24 and July 21, 1993, hearings lasting five (5) sessions were conducted in Fort Lauderdale, Florida.

CASE SUMMARY

Claimant alleged that he is an unsophisticated investor with limited assets who entrusted his entire life savings of Exxon stock to A.G.E. and that Respondents pressured him to sell the Exxon stock and put the proceeds in risky, unsuitable investments despite Claimant's stated investment objectives of safety of principal and income. Claimant also alleged that his account was churned by Respondents and that A.G.E. is liable for Claimant's losses because it failed to supervise its employees, Gasper and O'Brien. Claimant further contended that Respondents' actions constituted federal and state securities violations, civil theft, common law fraud and breach of fiduciary duty,

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and maintained that all purchases were thoroughly discussed with Claimant prior to the entry of any order and that half of the investment was withdrawn by Claimant and that the other half was lost due to market depreciation of the account for which Respondents are not responsible. Respondents further denied that Claimants account was churned.

RELIEF REQUESTED

Claimant requested compensatory damages in a minimum amount of \$200,000.00; punitive damages in a minimum amount of \$600,000.00; treble damages pursuant to Fla. Statute 772.101 et seq.; Reasonable attorney's fees, pursuant to Chapters 517,772 and 812, Florida Statute. (1987); Prejudgment interest on the compensatory damages; costs of this action including the costs and expenses of expert witnesses.

Respondents requested an award dismissing Claimant's Statement of Claim in its entirety and awarding Respondents their costs and expenses associated with the defence of this matter including reasonable attorney's fees and for such other relief as the arbitration panel may deem appropriate.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, A.G.E., Gasper and O'Brien, are found liable, jointly and severally and shall pay to the Claimant the amount of \$88,276.00 plus interest at the legal rate of 12% per annum from September, 1988 to June, 1993, in the amount of \$17,655.00 for a total due to the Claimant of \$105,931.00.
2. Respondents, A.G.E., Gasper and O'Brien, are also found liable, jointly and severally and shall pay to the Claimant the further amount of \$53,791.00 for attorney's fees pursuant to Chapters 517, 772 and 812 Florida Statute (1987). The Panel bases its authority to award attorneys fees on the Federal Arbitration Act and the case law construing that act.
3. Respondents, A.G.E., Gasper and O'Brien, are also found liable, jointly and severally and shall pay to the Claimant the further amount of \$50,000.00 for punitive damages. The panel bases its authority for the award of punitive damages on the Federal Arbitration Act, applicable case law and Florida Statute Section 768.73. Further, the granting of punitive damages is based upon the Panel's finding that Respondents egregiously mishandled and churned Claimant's account.
4. Respondents, A.G.E., Gasper and O'Brien, are also found liable to Claimant for costs and expert witness fees and shall pay to the Claimant the amount of \$8,547.00.
5. Claimant's request for treble damages is hereby denied.
6. Respondent's request for attorney's fees, costs and expenses is hereby denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$5,000.00 (five (5) hearing sessions X \$1,000.00).

1. Claimant is hereby assessed forum fees in the amount of \$1000.00 for which the NASD shall retain the \$1,000.00 previously deposited by Claimant in full satisfaction thereof.

2.. Respondents, A.G.E., Gasper and O'Brien, are hereby assessed forum fees in the amount of \$4,000.00, jointly and severally, payable to the NASD, Inc.

3. The NASD shall retain the non-refundable filing fee of \$250.00 paid by Claimant.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Guthrie F. Crowe, Esq.

Public/Chairman

/s/

Burt R. Rose

Public/Panelist

/s/

Carl J. Hegner

Industry/Panelist

Date of Decision: August 13, 1993