

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Arthur G. Milligan  
Chester W. Milligan. Individually  
and as Personal Representatives of the  
Estate of Gertrude H. Milligan

Case No. 92-02563

Name of Respondent(s)

A.G. Edwards & Sons, Inc.  
Walter Wanvig

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**REPRESENTATION**

For Claimants, Arthur G. Milligan ("A. Milligan") and Chester W. Milligan ("C. Milligan"), Individually and as Personal Representatives of the Estate of Gertrude Milligan ("the Estate"): Richard Groner, Esq. of Snyder, Groner & Schieb.

For Respondents, A.G. Edwards & Sons, Inc. ("A.G. Edwards") and Walter Wanvig ("Wanvig"): William Port, Esq. of A. G. Edwards.

**CASE INFORMATION**

Statement of Claim filed: August 3, 1992 and amended May 10, 1993. Claimants' Submission Agreements signed: July 29, 1992 by A. Milligan, and on August 10, 1992 by C. Milligan, and on October 6, 1992 by Chester and Arthur Milligan as Personal Representatives of the Estate.

Respondents' Statement of Answer filed: December 10, 1992 and amended May 21, 1993. Respondents' Submission Agreements signed: December 2, 1992 by Wanvig, and on December 8, 1992 by Stephen Sneeringer on behalf of A.G. Edwards.

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### **HEARING INFORMATION**

On August 10, 1993, in Tampa, Florida, a pre-hearing conference lasting one (1) session was conducted via telephone conference call with an arbitrator.

On October 5, October 6, and October 26, 1993, in Tampa, Florida, hearings lasting six (6) sessions were conducted.

### **CASE SUMMARY**

Claimants alleged that Respondents were liable for: failing to adhere to just and equitable principals of fair trading and fair treatment of their client; breach of fiduciary duty; tortious interference; violations of Chapter 517 of the Florida Statutes; negligence; misrepresentation; breach of the rules and regulations governing their professional conduct; violations of the Securities Act of 1933 including Section 12(2); violations of the Securities Exchange Act of 1934 including Sections 78(b) and 78T(a) and Rule 10(b)(5); violations of 17 C.F.R. Section 240.10(b)(5); and, under the doctrine of respondeat superior.

Claimants alleged that Respondent Wanvig, replaced an existing annuity, which Mrs. Milligan had owned for several years, with a new annuity which generated a substantial commission and which did not enjoy the tax benefits of the older annuity and which was unsuitable for Mrs. Milligan, her heirs and her estate.

Respondents denied all allegations of wrongdoing and alleged that: there is no cause of action whereby the beneficiary of an estate can bring an action for wrongful inheritance; since the Estate was not the beneficiary of the annuity and paid no inheritance taxes; it suffered no damages; the old annuity may not have qualified for the tax considerations either; Mrs. Milligan was not concerned about future tax consequences and merely wished to avoid current income tax; and Wanvig objected to being appointed Personal Representative of the Estate and resigned as Personal Representative immediately after opening the probate file with the court.

### **RELIEF REQUESTED**

Claimants requested damages of \$274,000 or, in the alternative, \$168,000 plus interest, costs, attorney's fees and punitive damages.

Respondents requested dismissal of the claim plus costs and attorney's fees.

**OTHER ISSUES CONSIDERED & DECIDED**

None.

**AWARD**

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

1. Respondents, A.G. Edwards and Wanvig, are found not liable to the Estate and, therefore, the Claim by the Estate is hereby dismissed.
2. Respondents, A.G. Edwards and Wanvig are found liable, jointly and severally, to A. Milligan individually and shall pay to A. Milligan the amount of \$27,500.
3. Respondents, A.G. Edwards and Wanvig, are also found liable jointly and severally, to C. Milligan individually and shall pay to C. Milligan the amount of \$27,500.
4. Claimants' request for attorney's fees, costs, punitive damages and interest is denied.
5. Respondents' request for attorney's fees and costs is denied.

**OTHER COSTS**

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

**FORUM FEES**

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,800 ( one (1) pre-hearing conference x \$300 plus 6 sessions x \$750 per session).
2. Respondents, A.G. Edwards and Wanvig, are hereby assessed \$4,800 of which \$750 shall be paid directly to the Claimants, and \$4,050 of which shall be paid to the National Association of Securities Dealers, Inc.

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3. The NASD shall retain the non-refundable filing fee of \$200 paid by the Claimants.

4. Respondents shall reimburse the Claimants \$200 for the non-refundable filing fee.

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

Concurring Arbitrators' Signatures

/s/  
Richard W. Reeves, Esq.

Public

/s/  
Allison Hardage

Industry

/s/  
Jordan Lederer

Public

Date of Decision: December 27, 1993