

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

George R. and Dorothy K. Williges

92-02752

Name of Respondent(s)

A.G. Edwards & Sons, Inc.
Charles A. Pascarella
Gus Giviskos
John E. Pascarella
Patrick O. Pascarella

REPRESENTATION

The Claimants appeared pro se.

For Respondents: M. Jane Matoesian in-house counsel at A.G. Edwards & Sons, Inc.

CASE INFORMATION

Statement of Claim filed: August 17, 1992.

Claimants' Submission Agreement signed on: August 14, 1992.

Claimants' Response to Respondents' Motion to Dismiss Statement of Claim Pursuant to Statute of Limitations filed: December 14, 1992.

Response to Respondents' Motion to Dismiss Respondent Charles A. Pascarella filed: December 14, 1992.

A.G. Edwards & Sons, Inc.'s Submission Agreement signed on: September 29, 1992.

Charles Pascarella's Submission Agreement signed on: October 29, 1992.

Gus Giviskos' Submission Agreement signed on: October 7, 1992.

John E. Pascarella's Submission Agreement signed on: October 20, 1992.

Patrick O. Pascarella's Submission Agreement signed on: October 13, 1992.

Joint Statement of Answer and Respondents' Motion to Dismiss Statement of Claim Pursuant to Statute of Limitations and Motion to Dismiss of Respondent Charles A. Pascarella filed: November 5, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: May 17, 1993 / Two Sessions
 May 18, 1993 / Two Sessions

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimants alleged that Respondents invested their entire pension funds into four highly speculative funds and subsequently directed Claimants, a retired couple, to take a \$75,000.00 second mortgage on their home and to invest those proceeds in an illiquid real estate limited partnership. Claimants further alleged Respondents controlled the purchase and sale of all securities transactions in Claimants' accounts and under their directive, the purchases and sales were conducted with reckless abandon and in total disregard of the Claimants' investment objectives and were unsuitable and the Respondents made misrepresentations to the Claimants. Claimants further alleged Respondents deliberately breached the fiduciary duty owed to Claimants; directed and controlled the investments in the IRA account and Joint Account for the sole purpose of generating commissions for themselves; further alleged that the entire portfolio of Claimants was concentrated, at any given time, in four funds recommended and purchased on behalf of Claimants by John and Pat Pascarella and Respondents engaged in common law fraud and violated federal and state securities laws.

Respondents maintained Claimants had an extensive investment history and met with Respondents on many occasions to discuss their investments and Claimants advised Respondents their primary investment objective was income. Respondents further maintained Claimants reviewed prospectuses for each of the investments which fully described the risks associated with the transactions and Claimants had a sufficient net worth and income to support their financial transactions and Claimants' accounts were at all times invested in a well-diversified portfolio which was entirely suitable for Claimants' investment objectives. Respondents further maintained Claimants' failure to contact them regarding their transactions should bar Claimants, pursuant to the doctrines of waiver, estoppel, laches and ratification, from asserting that there was any wrongdoing with respect to the handling of their accounts. Respondents further maintained Claimants made their own decisions regarding their investments and the damages allegedly suffered by Claimants were caused, if at all, by unforeseeable market factors and conditions.

Respondents asserted a Motion to Dismiss the Statement of Claim pursuant to the Statute of Limitations on the basis that the Statement of Claim is time-barred pursuant to all applicable statutes of limitations including the applicable New Jersey statutes of limitations for securities fraud: Section 12 of the Securities Act of 1933 and Claimants' claims are time-barred pursuant to *Lampf, Pleva, Lipkind, Prupis and Petigrow vs. Gilbertson*, 111 S. Ct. 2773, 2782 (1991). In response, the Claimants maintained that they rely on Section 15 of the NASD Code of Arbitration Procedure which provides for a six-year Statute of Limitation.

Respondents further asserted a Motion to Dismiss Respondent Charles A. Pascarella alleging that he was in no manner involved with the transactions in Claimants' accounts. In response, Claimants maintained Charles Pascarella was office manager during the time Claimants had their securities accounts with A.G. Edwards & Sons, Inc. and he was involved with both written and verbal communication they had with the firm and he was a material party to the claim.

RELIEF REQUESTED

Claimants requested damages of \$68,780.00 as compensation of losses, at least \$157,963.00 as lost opportunity cost, plus reasonable attorneys' fees, costs of proceedings, punitive damages as the panel may deem fair and reasonable and such other relief as justice requires. Claimants further requested a denial of the Respondents' Motions to Dismiss.

Respondents requested that all claims be dismissed in their entirety and that Respondents be awarded their costs and expenses incurred including reasonable attorneys' fees. Respondents further requested a ruling in their favor on the Motion to Dismiss Respondent Charles Pascarella and the Motion to Dismiss pursuant to Statute of Limitations.

AWARD

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

1. The Respondents' Motion to Dismiss pursuant to the Statute of Limitations is granted for count 5 (common law fraud) and Count 6 (violation of federal and state securities law).
2. The Respondents' Motion to Dismiss Respondents Charles Pascarella and Gus Giviskos raised during the hearing is granted.
3. The Respondents' Motion to Dismiss the remaining Respondents raised at the conclusion of Claimants' direct case is granted.
4. The Claimants' request for punitive damages is denied.

5. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

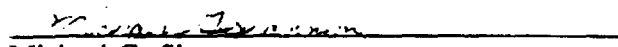
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

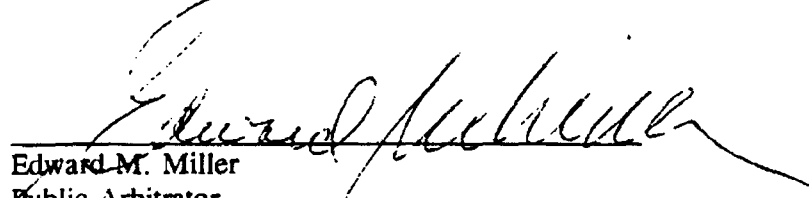
$\$750.00 \times 4 \text{ sessions} = \$3,000.00$ minus Claimant's hearing session deposit (\$750.00)
= net \$2,250.00 due.


The Claimants be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$750.00 to represent forum fees and the Respondent A.G. Edwards & Sons, Inc. be and hereby is liable and shall pay to the NASD the sum of \$1,500.00 to represent forum fees.

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

ARBITRATORS' SIGNATURE


Michael G. Shannon
Public Arbitrator


Edward M. Miller
Public Arbitrator


Luciano Moschetta
Industry Arbitrator

Dated by the NASD: June 29, 1993

STATE OF: NEW YORK

SS:

COUNTY OF: NEW YORK

On this 14 day of JUNE, 1993, before me personally appeared **Michael G. Shannon** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Michael G. Shannon

STATE OF:

Notary Public for the State of New York
Commission Expires August 31, 1994

COUNTY OF:

SS:

On this 16 day of JUNE, 1993, before me personally appeared **Edward M. Miller** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Edward M. Miller

RONALD S. AMAR
Notary Public of N.J.
My Commission Expires Feb. 7, 1994

STATE OF:

SS:

COUNTY OF:

On this 14 day of JUNE, 1993, before me personally appeared **Luciano Moschetta** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Luciano Moschetta