

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)

William E. Frantz

92-03672

Name of Respondent(s)

A.G. Edwards & Sons, Inc.  
Pierce Hammond

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**REPRESENTATION**

For Claimant: Daniel I. MacIntyre, Esq. of Wilson, Strickland & Benson, P.C.

For Respondents: Clay M. Grumke and Stephen G. Sneeringer, Esqs. of A.G. Edwards & Sons, Inc.

**CASE INFORMATION**

Statement of Claim filed: October 29, 1992

Claimant's Submission Agreement signed on: October 27, 1992.

Joint Statement of Answer filed by Respondents, A.G. Edwards & Sons, Inc. and Pierce Hammond on: January 12, 1993.

Respondent, A.G. Edwards & Sons, Inc.'s Submission Agreement signed on: January 4, 1993.

Respondent, Pierce Hammond's Submission Agreement signed on: January 7, 1993.

**HEARING INFORMATION**

Pre-Hearing Conference: July 8, 1993/One session

Hearing Date(s)/Sessions: July 21, 1993/Two sessions  
July 22, 1993/Two sessions

Hearing Location: NASD offices located in Atlanta, Georgia.

## **CASE SUMMARY**

Claimant alleges that Respondent Pierce Hammond("Hammond") induced him to make an investment in First Mortgage Private Activity Bonds("the Bonds") which he alleges to be unsuitable in light of his investment history, investment objective and sophistication and therefore a violation of Article III, Section II of the NASD Rules of Fair Practice. Claimant further alleges that, even though Respondents knew that they should not have dealt directly with Claimant without involving his trusted accountant, he was induced to purchase the Bonds without the aid of his accountant, at a time when Claimant was mentally and physically disabled. Claimant also alleges that Respondent Hammond purchased the Bonds on a second occasion for Claimants' account even though Claimant never agreed to purchase these additional Bonds. Claimant also alleges that Respondent Hammond deliberately misrepresented material facts and failed to disclose the risks of non-payment or illiquidity of the Bonds in violation of Section 12(2) of the Securities Act, Sections I and XVIII of Article III of the NASD Rules of Fair Practice and Sections 10-5-12(a)(2)(B), 51-6-1 and 52-6-2 of the Georgia Securities Act. Even if Respondent Hammond's misrepresentations and omissions are not found to be deliberate, Claimant alleges that they were negligent and constitute a breach of contract. Claimant alleges that Respondents A.G. Edwards & Sons, Inc.("A.G. Edwards") is responsible for Respondent Hammond's acts both as a controlling person and under the principle of respondeat superior.

Respondents maintain that Respondent Hammond discussed the Bonds with Claimant and his accountant prior to both purchases and that Respondent Hammond was not aware of any physical or mental impairment which obstructed the investment judgement of Claimant or his accountant. Respondents also maintain that the second purchase was completely authorized and that the Bonds were suitable for Claimant given his experience, expressed investment objectives and investment history. Respondents further maintain that Claimant's accountant received monthly statements and confirmations showing both purchases and which clearly stated that the Bonds were non-rated and that Respondent A.G. Edwards did not make a market for these securities. Respondents also maintain that over a year passed before any complaint was filed asserting that Claimant never received a prospectus. Respondents maintain that Claimant's Statement of Claim fails to state a claim upon which relief can be granted and is barred by the applicable statute of limitations, the Claimant's Customer Agreement, Section 8-319 of the U.C.C and by the doctrines of waiver, estoppel, laches and ratification. Respondents also maintain that Claimant voluntarily assumed the risk, failed to mitigate damages and is contributorily negligent for the alleged losses. Respondents further maintain that the losses were caused by unforeseeable were caused by unforeseeable market forces. Respondents also maintain that attorneys' fees under Section 13-6-11 of O.C.G.A. are not allowed in this case because there is a good faith dispute between the parties.

Respondents also assert a Counter-Claim in which they allege that Claimant

executed an agreement in which Claimant agreed to pay any expenses, including attorneys' fees incurred by Respondents should respondents prevail.

### **RELIEF REQUESTED**

Claimant requested an award granting the rescission of the purchase of the Bonds, punitive damages in the amount of \$100,000 and costs, including attorneys' fees pursuant to Section 13-6-11 of the O.C.G.A.

Respondents request that the claim be dismissed in its entirety and an award for their expenses, including attorneys' fees pursuant to an agreement executed by the Claimant.

### **OTHER ISSUES CONSIDERED & DECIDED**

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator(s) has/have decided in full and final resolution of the issues submitted for determination as follows:

- 1) The claim is hereby dismissed in its entirety.
- 2) The Counter-Claim is hereby dismissed in its entirety.
- 3) Claimants' request for punitive damages is hereby denied.
- 4) 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.

\$3,000(Four Hearing sessions X \$750) minus hearing session deposit of \$750 = Net \$2,250 due.

Claimant is hereby liable and shall pay to the NASD, Inc. the sum of \$750.

Respondents A.G. Edwards & Sons, Inc. and Pierce Hammond are jointly and severally liable and shall pay to the NASD, Inc. the sum of \$1,500.

Concurring Arbitrators' Signatures  
Name -

Public/Industry

Sidney R. Barrett, Esq.

Date of Decision: 8/21/93