

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gladys S. Minkin et al.

Case No. 93-00323

Name of Respondent(s)

A.G. Edwards & Sons, Inc.
Edmond E. Dorit

REPRESENTATION

For Claimant, Gladys S. Minkin, individually and as Trustee, et. al ("Minkin"): Marina Shank Klein, Esq., of Fort Lauderdale, Florida.

For Respondent, A.G. Edwards & Sons, Inc. ("AGE"): Clay L. Grumke, Esq. of AGE., St. Louis, MO.

For Respondent, Edmond E. Dorit, ("Dorit"): R. Lawrence Bonner, Esq. of Greer, Homer & Bonner, P.A., Miami, Florida.

CASE INFORMATION

Statement of Claim filed: January 29, 1993. Claimant's Submission Agreement signed: January 25, 1993.

Respondents' Statement of Answer filed: June 21, 1993. Respondents' Submission Agreements signed: June 18, 1993 by Stephen G. Sneeringer on behalf of AGE and on June 9, 1993 by Dorit.

HEARING INFORMATION

On February 22, 1994, in Fort Lauderdale, Florida, a prehearing Conference lasting 1 session was conducted with an arbitrator.

On February 23 and 24; May 3, 4 and 5; and June 20 and 21, 1994, in Fort Lauderdale, Florida, hearings lasting 18 sessions were conducted.

CASE SUMMARY

Claimant alleged that Dorit was the Manager of the AGE office where Minkin had her account; that Minkin is 76 years old and has been a widow since 1982; that Minkin met with Dorit and discussed her investment objectives with him; and, told Dorit that safety of principal, income and preservation of capital were to be the investment objectives for all accounts. Claimant brought a claim against AGE and Dorit for: 1) breach of contract, alleging that Respondents Dorit and AGE breached this contract by, among other things, (a) treating her account as a trading account, and churning her account in equity securities, (b) making other false statements as to the need to sell the municipal bonds and other securities in her portfolio to obtain a better return; (2) failure of AGE to supervise the activities of Dorit and his handling of Claimant's account to insure Minkin's investment objectives were being met, which acts were the proximate cause of Claimant's loss; (3) violations of Florida Statutes Sections 517.301, fraudulent transactions, falsification or concealment of facts; (4) fraud under the common law of the State of Florida in that Dorit and AGE omitted to state to Claimant material facts in connection with the sale and purchase of the securities in her portfolio, and made misrepresentations of material facts to Claimant; (5) attorney's fees based on the Florida Statutes Chapter 517.211; and (6) violations of the Florida theft statutes, Chapter 812.014.

Respondent Dorit denied all liability and asserted that he followed the directions given by Mrs. Minkin; that Claimant did not lose any money and that excessive trading did not occur in her account; and, that the claims asserted against Mr. Dorit are barred by the statute of limitations.

Respondent AGE denied all allegations of wrongdoing; denied all allegations made by the Claimant and additionally raised the defenses of failure to object under Sec.8-319 of the Uniform Commercial Code; AGE alleged that Claimant is barred from recovering from AGE under the doctrines of ratification, account stated, estoppel, waiver and laches; Claimant's contributory negligence; under the theory of assumption of the risk; that any damages allegedly suffered by Claimant were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in Claimant's account, for which AGE is not liable or

responsible; that Claimant's complaint is barred by the statutes of limitations as set forth in the Lampf decision. For all of the above reasons, Respondent AGE requested that all claims be dismissed against it and that all costs be assessed against the Claimants, including attorney's fees for defending this action.

RELIEF REQUESTED

Claimant requested damages in the amount of \$441,759.00, interest, costs, damages for Civil Theft equal to twice the gross loss, punitive damages and attorney's fees.

Respondents requested dismissal, costs and attorney's fees.

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 AGE and Dorit are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's requests for attorney's fees, costs, civil theft damages, and punitive damages are denied.
3. Respondents requests for attorney's fees and costs are denied.

OTHER COSTS

1. The Panel has assessed \$533.03 in administrative costs for the travel expenses of Harold Alenick. Claimant is hereby assessed \$177.67, Respondent AGE is assessed \$177.68 and Respondent Dorit is assessed \$177.68.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$13,800.00 (1 pre-hearing conference x \$300.00, plus 18 sessions x \$750.00).
2. Claimant is hereby assessed \$4,600.00 for which the NASD shall retain the \$3,600.00 previously deposited in partial satisfaction thereof, leaving a balance due to the National Association of Securities Dealers, Inc. of \$1,000.00.
3. Respondent AGE is hereby assessed \$4,600.00 for which the NASD shall retain the \$3,350.00 previously deposited in partial satisfaction thereof, leaving a balance due to the National Association of Securities Dealers, Inc. of \$1,250.00.
4. Respondent Dorit, is hereby assessed \$4,600.00, for which the NASD shall retain \$4,600.00 of the \$5,350.00 previously deposited in full satisfaction thereof, and shall refund the remaining \$750.00.
5. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

15/
Diane M. Perry, Esq.

15/
Harold Alenick

15/
Edward S. Burstein

Date of Decision:

7/29/94