

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

John J. Barile

93-00610

Name of Respondent(s)

A.G. Edwards & Sons, Inc.  
Roger M. Stevenson

---

REPRESENTATION

For Claimant: Jeffrey A. Sellers of Silverberg, Yood, Sellers & McGorry.

For Respondent: William s. Port, Esq., in house counsel of A.G. Edwards .

CASE INFORMATION

Statement of Claim filed: February 16, 1993.

Claimant's Submission Agreement signed on: February 12, 1993.

Joint Statement of Answer filed by A.G. Edwards and Stevensen on: April 16, 1993.

Respondent, A.G. Edwards' Submission Agreement signed on: April 14, 1993.

Respondent, Stevensen's Submission Agreement signed on March 1, 1993.

HEARING INFORMATION

Hearing Dates/Sessions:      December 14, 1993 - 2 Sessions  
   December 15, 1993 - 2 Sessions

CASE SUMMARY

Claimant alleged that he opened an account with A.G. Edwards after discussions

education, lack of knowledge of the financial markets, general lack of financial sophistication as well as his recent divorce and limited financial resources. Claimant alleged that Mr. Agnello understood that while Claimant wanted to make money in the stock market, he could not afford any significant losses and that Claimant would be strictly relying on Mr. Agnello. Claimant alleged that Mr. Agnello retired and Stevensen assumed the responsibilities of Claimant's account. Claimant alleged that he spoke with Stevensen to insure himself that Stevensen understood his investment objectives and would proceed in a manner comparable to that which Mr. Agnello had followed. Claimant alleged that during the period of time during which Stevensen handled the account and during which claimant relied upon Stevensen, Stevensen reduced the value of the account from \$35,401.46 to \$981.96. Claimant alleged that Respondent engaged in a course of excessive trading, made trades without consulting Claimant, and made investments which deviated from Claimant's investment objective.

Respondents maintained that Claimant led Respondents to believe that he was aware of the risk of loss associated with investing in the stock market and that he was willing to speculate to make money. Respondents denied that Claimant told Stevensen that the assets in his account represented his life savings or that he could not afford any significant losses.

Respondents maintain that Stevensen suggested that claimant consider selling short and explained in great detail the mechanics of short selling. Respondents denied that Stevensen engaged in excessive trading or unauthorized trading.

#### **RELIEF REQUESTED**

Claimant requested:

- 1) that A.G. Edwards and Stevensen jointly and severally be directed to pay to Claimant the sum of \$35,401.46, plus interest from January 1, 1990.
- 2) that A.G. Edwards and Stevensen jointly and severally be directed to reimburse and refund to claimant that sum by which they were unjustly enriched, that being commissions and margin interest charged; and
- 3) Such further and different relief as the arbitrators deem just, proper and appropriate in the circumstances.

Respondents requested: That Claimant's claim be denied in its entirety.

**AWARD**

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

1. All Claims be denied in their entirety.
2. That Claimants pay one-half the cost of the forum fees for this arbitration.
3. That Respondents pay one-half the cost of the forum fees for this arbitration.

**FORUM FEES**

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

Non-refundable filing Fee: \$120.00

Hearing Session Fees: \$400 x 2 sessions = \$800.00

Total: \$920.00

1. Claimant shall pay the NASD the sum of \$460.00 to be offset by the \$520.00 already paid to the NASD as a filing fee and hearing session deposit. Claimant shall receive a reimbursement of \$60.00 from the Respondent.
2. Respondents shall jointly and severally pay the NASD the sum of \$460.00. This amount will be satisfied by reimbursing the claimant \$60.00 and paying the balance of \$400.00 to the NASD.

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

Page 4

NASD Case #93-00610

Concurring Arbitrators' Signatures

Name

Public/Industry

David Buch

David Buch, Esq.

Date of Decision: \_\_\_\_\_

NASD Date of Decision: March 22, 1994

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 2nd day of March, 1994, before me personally appeared David Buch, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Margaret M. Doskoz

MARGARET M. DOSKOCZ  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires December 8, 1994