

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jeffrey R. Anderson

93-01439

Name of Respondents

A. G. Edwards & Sons, Inc. and
Paul Bishop

REPRESENTATION OF PARTIES

For Claimant, Jeffrey Anderson, at the hearing: Vincent D. Louwagie, Esq. of Fruth & Anthony, P. A., Minneapolis, Minnesota.

For Respondent, A.G. Edwards & Sons, Inc., at the hearing: Clay Grumke, Esq. of A.G. Edwards & Sons, Inc., St. Louis, Missouri. For Respondent, Paul Bishop, at the hearing: Eric G. Wallis, Esq. of Crosby, Heafey, Roach & May, Oakland, California.

CASE INFORMATION

Statement of Claim filed: April 8, 1993. Claimants' Submission Agreement signed on: March 15, 1993.

Statement of Answer filed by Respondent, A.G. Edwards & Sons, Inc. on: June 10, 1993.
Statement of Answer filed by Respondent, Paul Bishop, on: July 15, 1993.

Respondent, Paul Bishop's Submission Agreement signed on: August 12, 1993. Respondent, A.G. Edwards & Sons, Inc. Submission Agreement signed on: June 10, 1993.

HEARING INFORMATION

Hearing dates: February 8, 1994 for two (2) sessions;
February 9, 1994 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant, Jeffrey Anderson ("Anderson") alleged that Respondents A.G. Edwards & Sons, Inc. ("A.G. Edwards") and Paul Bishop ("Bishop") are liable for failing to follow instructions of its client, purchasing unsuitable investments, and engaging in excessive trading with respect to Anderson's account held with A.G. Edwards.

Respondent A.G. Edwards generally denied the allegations set forth in the Statement of Claim. A.G. Edwards stated in their Answer that Anderson is barred from recovering any damages because he failed to complain to A.G. Edwards within 10 days of receipt of written confirmation as per the Customer's Agreement, that he is barred from recovering under the doctrine of estoppel, waiver and laches, that he is barred from recovering because he failed to mitigate his damages, that he is barred from recovering because he failed to exercise a degree of care over his affairs and investments, and because he was aware of the risks involved from the outset. A.G. Edwards also stated that the damages allegedly suffered were a result of the unforeseeable market factors for which they are not liable or responsible.

Respondent Bishop stated in his Answer that Anderson's securities and options accounts were handled pursuant to his investment objectives and the losses in the tax account were due to investments Anderson was familiar with. Bishop also stated that no churning occurred and the investments were suitable. Bishop set forth the following affirmative defenses in his Answer: Estoppel, Waiver, and Failure To Mitigate Damages.

RELIEF REQUESTED

Claimant requested compensatory damages in excess of \$79,446.18; punitive damages in an equal amount to deter future abuses; reasonable attorney's fees under Minn. Stat. Section 80A.23 and under principles of equity; interest at six percent on all damages awarded from the time Anderson deposited the funds with A.G. Edwards; plus costs, disbursements, and expenses, and for such other relief as the arbitrators deem just and equitable.

Respondent A.G. Edwards stated that the Statement of Claim fails to state a claim against them upon which relief can be granted. Respondent Bishop stated that Anderson has no claim against him.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Paul Bishop filed a Motion To Change Venue and Claimant filed a response thereto. The panel denied the motion.

The parties present at the hearing have agreed that the Award in this matter may be executed by 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 original remains 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 A.G. Edwards & Sons, Inc. and Paul Bishop shall be and hereby are jointly and severally liable for, and shall pay to the Claimant, Jeffrey Anderson, damages in the amount of Sixty Four Thousand, Four Hundred Sixty Nine Dollars (\$64,469.00);
2. Claimant's request for punitive damages is denied;
3. Respondents A.G. Edwards & Sons, Inc. and Paul Bishop shall be and hereby are jointly and severally liable for, and shall pay to the Claimant, Jeffrey Anderson, attorney's fees in the amount of Twenty Three Thousand, Five Hundred Eighteen Dollars and Twenty Five Cents (\$23,518.25). The panel awarded attorney's fees pursuant to the authority of Minn. Stat. Section 80A.23;
4. Claimant's request for interest is denied;
5. Each of the parties shall bear their own costs and expenses, other than those specifically enumerated herein;

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

4 hearing sessions X \$750.00 = \$3000.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200, and shall retain the hearing session deposit in the amount of \$750 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$2250 are, jointly and severally, assessed against Respondents A.G. Edwards & Sons, Inc. and Paul Bishop.

The additional forum fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

<u>3-17-94</u>	s/s	<u>Janice K. Frankman, Esq.</u> Janice K. Frankman, Esq. Presiding, Public Arbitrator
<u>3-11-94</u>	s/s	<u>Wendy A. Sacha</u> Wendy A. Sacha Public Arbitrator
<u>3-11-94</u>	s/s	<u>Edward J. Hentges</u> Edward J. Hentges Industry Arbitrator

Date Award Served By The NASD: 3-25-94

NASD DISCIPLINARY REFERRAL

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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Jeffrey R. Anderson

93-01439

Name of Respondents

A.G. Edwards & Sons, Inc. and Paul Bishop

After reading the Statement of Claim and Answer to the claim submitted to the NASD by the parties, and after hearing testimony presented by the parties at the hearing held in Minneapolis, Minnesota on February 8, 1994, the panel ordered that the following conduct of Respondent Paul Bishop be reviewed by the NASD Disciplinary Review Board:

1. Respondent Paul Bishop's trading practices in the account of Jeffrey Anderson: In this case, it was alleged that the account of customer Anderson was "churned" and expert testimony was presented to show that the account was turned over 3 times in a 3 month period, an annual rate of 12 (claimant's exhibit 1). Further, the earnings would have had to be between 40%-55% on an annual basis to break even.

2. Respondent Paul Bishop's trading practices in other customer accounts: While the handling of Paul Bishop's other accounts was not included in the evidence at the hearing, his testimony was that he "traded" his accounts, which leads the panel to believe a high turnover probably occurred in his other customers accounts also.

By The Arbitration Panel:

3-17-94

s/s

Janice K. Frankman, Esq.
Janice K. Frankman, Esq.
Presiding, Public Arbitrator

3-11-94

s/s

Wendy A. Sacha
Wendy A. Sacha
Public Arbitrator

3-11-94

s/s

Edward J. Hentges
Edward J. Hentges
Industry Arbitrator