

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Anthony R. and Mary Lou Patete

93-02063

Name of Respondents

A.G. Edwards & Sons, Inc.  
Philips, Appel & Walden Inc.  
Frederick Karafin

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**REPRESENTATION**

Claimants Anthony R. Patete and Mary Lou Patete ("Claimants") were represented at the hearing by David Nicholls, Esq. of Allentown, Pennsylvania.

Respondent A.G. Edwards & Sons, Inc. ("A.G. Edwards") was represented at the hearing by William S. Port, Esq. of A.G. Edwards & Sons, Inc., of St. Louis, Missouri.

Respondent Philips, Appel & Walden, Inc. ("Philips, Appel & Walden") did not appear at the hearing. (See "Other Issues").

Respondent Frederick Karafin ("Karafin") appeared at the hearing pro se.

**CASE INFORMATION**

The Statement of Claim was filed with the NASD by Claimants Anthony R. Patete and Mary Lou Patete on May 18, 1993. The Uniform Submission Agreement was signed by Claimants on June 15, 1993.

A Statement of Answer was filed by Respondent A.G. Edwards on September 20, 1993. The Uniform Submission Agreement was signed by Stephen G. Sneeringer, Vice President and Counsel, on behalf of A.G. Edwards on September 2, 1993.

Respondent Philips, Appel & Walden did not file an answer to the Statement of Claim, and did not execute a Uniform Submission Agreement. (See "Other Issues").

A Statement of Answer was filed by Respondent Frederick Karafin on September 2, 1993. The Uniform Submission Agreement was signed by Karafin on August 25, 1993.

### **HEARING INFORMATION**

A Preliminary Hearing was held on January 19, 1995 with the Chair for one (1) hearing session.

The hearing was held on May 31, 1995, at the Holiday Inn Center City in Philadelphia, Pennsylvania, for a total of two (2) hearing sessions.

### **CASE SUMMARY**

Claimants Anthony R. Patete and Mary Lou Patete alleged in their Statement of Claim that Respondent Frederick Karafin, while in the employ of Respondents Philips, Appel & Walden and later A.G. Edwards, engaged in unauthorized trading and placed the Claimants on margin without their knowledge or approval. Claimants further alleged that they did not understand their monthly statements and repeatedly asked Karafin for an explanation, which he did not provide. Claimants alleged that Karafin made distributions of principal to Claimants from their account while representing that all such distributions represented interest income. Claimants alleged that the investments made in their account by Karafin were contrary to their stated investment objectives, and that the trading was unwarranted in light of Claimants' limited assets and limited sophistication. Claimants alleged that the Respondents' actions constituted violations of suitability or contractual standards, breach of fiduciary duty, breach of contract, common-law fraud, misrepresentation, violations of Rule 10(b) 5 of the Securities and Exchange Act of 1934, mail and wire fraud, and negligence. Claimants further alleged that Respondents Philips, Appel & Walden and A.G. Edwards failed to exercise reasonable due care to adequately supervise Karafin's activities.

Respondent A.G. Edwards in its Answer denied each and every substantive allegation contained in the Statement of Claim and requested that the Claim be dismissed in its entirety. A.G. Edwards set forth the following affirmative defenses in its Answer: failure to state a claim upon which relief may be granted; Claimants' claims are barred under their A.G. Edwards Customer Agreement by their failure to promptly object to or notify A.G. Edwards of the acts and omissions of which they complain; Claimants' claims are barred by the doctrines of estoppel, laches, and ratification and waiver, and by the applicable statute of limitations; Claimants are barred from recovery by their contributory negligence; Claimants were aware of the risks inherent in the investments made by them, which risks they voluntarily assumed; any loss experienced by Claimants is the result of unforeseeable market factors and conditions for which A.G. Edwards is not liable or responsible; and Claimants failed to mitigate their damages.

Respondent Philips, Appel & Walden did not file an answer to these allegations.

Respondent Frederick Karafin in his Answer categorically denied all allegations contained in the

Statement of Claim and requested that the Claim be dismissed. Respondent Karafin stated that he met the Claimants in 1985 while he was employed as a registered representative with Kidder Peabody. Karafin asserted that Claimants' investment goals were: to invest in U.S. Treasuries, Certificates of Deposit ("CDs"), and GNMA's; to utilize a margin account to take advantage of market fluctuations; and to offset margin interest against income from CDs and real estate on their income tax returns. Karafin further stated that when he subsequently moved from Kidder Peabody to Philips, Appel & Walden and later to A.G. Edwards, Claimants transferred their account to each new firm and executed new margin account agreements. Karafin stated that all positions were discussed in detail with Claimants and there was never any position taken without their specific approval. Karafin maintained that a confirming call was made to Claimants after each trade to indicate that a transaction was completed as instructed, and that Claimants were provided with detailed written confirmations and monthly account statements. Karafin maintained that the alleged decline in the value of Claimants' account was the result of bond price fluctuations, cash withdrawals made by Claimants, and margin interest charged. Karafin further stated that Claimants indicated that they had other brokerage accounts, bought and sold real estate for profit, and had substantial real estate investments. Karafin asserted that in his opinion Claimants understood what was going on and were able to make intelligent decisions.

#### **RELIEF REQUESTED**

Claimants Anthony R. Patete and Mary Lou Patete in their Statement of Claim requested repayment of all margin interest charges, reimbursement of all brokerage commission fees and other charges, reimbursement of the net loss on their trading account, and payment of interest on their principal at the same rate of interest they would have received from their prior investments in CDs, savings accounts, and money market accounts.

Respondent A.G. Edwards & Sons, Inc. requested that the Statement of Claim be dismissed in its entirety, that they be awarded all costs and expenses including reasonable attorney's fees, and any further relief that the panel may deem appropriate.

Respondent Philips, Appel & Walden, Inc. did not answer the Statement of Claim and did not state a relief.

Respondent Frederick Karafin requested that the Statement of Claim be dismissed.

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

Upon review of the file and the representations made by the NASD staff attorney, the panel has determined that Respondent Philips, Appel & Walden has been properly served with the Statement of Claim pursuant to Section 25 of the NASD Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent Philips Appel & Walden had received due notice of the hearing as required under Section 26 of the Code and that arbitration of the matter would proceed

pursuant to Section 29 of the Code.

Respondent Philips, Appel & Walden did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the arbitration panel on all issues submitted.

Claimants Anthony R. Patete and Mary Lou Patete entered into a settlement agreement with Respondent A.G. Edwards after the start of the hearing, whereby all claims are dismissed as to Respondent A.G. Edwards.

Respondent A.G. Edwards filed a Motion to Dismiss Claimants' Statement of Claim. Respondent Karafin joined in the Motion. The Claimants filed a response and A.G. Edwards filed a reply. In addition, Respondent A.G. Edwards filed a Renewed Motion to Dismiss. After due consideration, the panel denied A.G. Edwards' Motion to Dismiss Claimants' Statement of Claim and Renewed Motion to Dismiss.

At hearing, Claimants, through their counsel David Nicholls, Esq., identified three additional witnesses they intended to present during their case-in-chief. Respondents A.G. Edwards and Karafin objected stating that they had not received prior notice of these witnesses. The panel met in executive session and after due deliberation decided to exclude these witnesses from the arbitration pursuant to Section 32(c) of the Code.

The parties have agreed that the Award in this matter may be executed by counterpart copies. The parties have also 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. The Statement of Claim filed by Claimants Anthony R. Patete and Mary Lou Patete, is denied and dismissed in its entirety.
2. Each of the parties shall bear their own costs and expenses incurred, other than those specifically provided for herein.
3. Any relief not specifically provided for herein is denied.

**FORUM FEES**

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

1 pre-hearing session x \$300 = \$300.  
2 hearing sessions x \$400 = \$800.

Pursuant to Section 43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$120, and the hearing session deposit in the amount of \$400 previously paid to the NASD by Claimant.

Pursuant to Section 43(c) of the Code, the NASD shall retain the postponement fee in the amount of \$400 previously paid to the NASD by Claimants.

The panel has ordered that Respondent A.G. Edwards & Sons, Inc. pay a pre-hearing session fee in the amount of \$300 to the NASD.

The panel has ordered that Respondent Frederick Karafin pay additional forum fees to the NASD in the amount of \$400.

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

**By The Arbitration Panel:**

Dated:

June 2, 1995



Guillermo L. Bosch, Esq., Presiding  
Public Arbitrator

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Patrick Sean Dolan  
Public Arbitrator

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Daniel T. McHugh  
Industry Arbitrator

Date Award Served By the NASD: 6/8/95

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The panel has ordered that Respondent A.G. Edwards & Sons, Inc. pay a pre-hearing session fee in the amount of \$300 to the NASD.

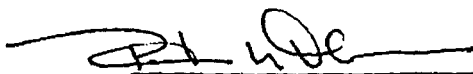
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Dated:

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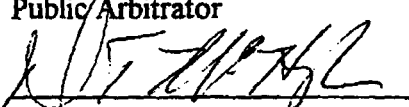
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Guillermo L. Bosch, Esq., Presiding  
Public Arbitrator

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Patrick Sean Dolan  
Public Arbitrator

6/2/95

  
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Daniel T. McHugh  
Industry Arbitrator

Date Award Served By the NASD: 6/8/95