

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Churchill P. Goree,
Claimant,

v.

Shearson Lehman brothers, Inc.,
A. G. Edwards & Sons, Inc.,
PaineWebber, Inc.,
Rafael Golan,
Bruce K. Dorfman, and
Wall Street Trading Group, Ltd.,
Respondents,

and

No. 93-02777

A. G. Edwards & Sons, Inc.,
Counterclaimant,

v.

Churchill P. Goree,
Counterrespondent

REPRESENTATION OF PARTIES

Churchill P. Goree ("**Claimant**") was represented by Robert D. Mitchell, Esq., Scottsdale, Arizona.

A. G. Edwards & Sons, Inc. ("**AGE**") was represented by M. Jane Matoesian, Esq., and Stephen Sneeringer, Esq., of A. G. Edwards & Sons, Inc., St. Louis, Missouri.

Bruce K. Dorfman ("**Dorfman**"), and Wall Street Trading Group, Ltd ("**WST**") were initially represented by Fred S. Konigsberg, Esq., Larkspur, California. Dorfman also appeared on his own and WST's behalf.

Rafael Golan ("**Golan**") appeared on his own behalf.

CASE INFORMATION

Claimant's statement of Claim and Demand for Arbitration was filed on or about July 14, 1993. Claimant's Submission Agreement was signed on July 14, 1993. Claimant's Response to AGE's Counterclaim was filed on or about October 21, 1993.

AGE's Statement of Answer and Counterclaim was filed on or about September 21, 1993. AGE's Submission Agreement was signed on or about September 21, 1993.

Dorfman's and WST's Statement of Answer was filed on or about March 10, 1994. Dorfman's and WST's Submission Agreements were signed on October 13, 1993 and December 7, 1993.

Golan's Statement of Answer was filed on or about September 16, 1993. Golan's submission agreement was signed on September 16, 1993.

PaineWebber, Inc.'s Statement of Answer was filed on or about December 27, 1993. PaineWebber, Inc.'s Submission Agreement was signed on December 29, 1993.

Shearson Lehman brothers, Inc.'s Statement of Answer was filed on or about October 8, 1993.

Claimant's notice of settlement with Shearson Lehman brothers, Inc. was filed on or about June 9, 1994.

Claimant's notice of settlement with PaineWebber, Inc. was filed on October 27, 1994.

Claimant's notice of dismissal of Midatlantic Securities was filed on or about November 30, 1993.

HEARING INFORMATION

Telephonic pre-hearing conferences were held on September 14, 1994, January 30, 1995, September 6, 1995, and November 7, 1995 for a total of four (4) sessions.

The hearing was held on September 11 through 20, 22, and 23, 1995 for two (2) sessions each day, December 4, 5, and 6, 1995 for two (2) sessions each day, and January 16, 17, and 18, 1996 for two (2) sessions each day in Phoenix, Arizona for a total of 34 sessions.

CASE SUMMARY

Claimant alleged that Respondents: Violated NASD and NYSE rules governing suitability through their placing Claimant in risky investments contrary to his conservative financial objectives and needs; breached their fiduciary duty by recommending the investments made in Claimant's accounts; were negligent in that they failed to exercise the care and skill which the public is entitled to expect from stockbrokers; committed securities fraud in violation of A.R.S. §44-1991(2) through soliciting investments in a way that caused Claimant to believe the securities and commodities were quality investments that would not risk his principal; violated the Federal RICO Act, 18 U.S.C. §1961, et seq.; violated A.R.S. §13-2304 of the Arizona racketeering Act ("AZRAC"); committed common law fraud; made intentional and negligent misrepresentations; breached their contract; and inflicted Claimant with emotional distress through intentional conduct or conduct done with reckless disregard of the near certainty that such distress would result from their misconduct. Claimant also alleged that AGE, and WST: Failed to supervise the activities of Golan and Dorfman; and that they directly participated in the wrongful conduct of Golan and Dorfman and their failure to supervise and participation in the wrongful conduct done to Claimant. The allegations arose out of transactions in commodities, options, and stock, including, but not limited to Russell Corporation stock, more fully discussed at the hearing.

Unless otherwise admitted therein, AGE denied each and every allegation in the Statement of claim. In addition, AGE asserted the following affirmative defenses: Claimant failed to mitigate his damages, and to the extent that Claimant alleges damages were sustained after he knew or should have known of the alleged acts and omissions, he is barred from recovering such damages; Claimant is barred by his own contributory negligence and/or comparative fault; claimant's knowing and voluntary assumption of risk was the sole and proximate cause of his alleged damages; Claimant's alleged damages were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities and options in Claimant's accounts; the Statement of Claim fails to state a claim for relief against AGE upon which relief may be granted; AGE acted with diligence in handling Claimant's accounts, and could not, in the exercise of reasonable care, have known of any untrue statements made to the Claimant; Claimant authorized the conduct of AGE of which he complains; Claimant's action is barred by the applicable statutes of limitations, including those applying to actions brought under RICO and AZRAC; as a result of Claimant's failure to notify or object to AGE of the acts and omissions of which he complains within 10 days of receipt of written confirmation, account statements, and other documents setting forth or evidencing transactions in his account, or within three (3) days of receipt of written confirmation, account statements and other documents setting forth or evidencing transactions in his options account, claimant is barred from recovering from AGE under paragraph 13 of his customer agreement; Claimant is barred from recovery under the doctrines of laches, ratification, account stated, estoppel and waiver; and there is no implied cause of action for violation of NASD or NYSE rules and regulations.

For its counterclaim, AGE asserted a cause of action pursuant to paragraph 23 of the Customer Agreement, and Option Agreement exhibit f, paragraph 13, for costs and expenses incurred by AGE in order to defend this action.

For their joint Answer, WST and Dorfman, unless otherwise admitted therein, denied the allegations contained in the statement of claim. Dorfman and WST stated that all denials and affirmative defenses applicable to AGE applied equally to them, and that they incorporated and accepted said denials and affirmative defenses in their Statement of Answer.

Unless otherwise admitted therein, Golan denied the allegations contained in the Statement of Claim. Golan specifically stated that: Claimant held himself out to be the investment expert with his many businesses and influential connections; most, if not all, of the shares of Russell Corporation stock that came from claimant came with some debt and/or were immediately margined to pay for Claimant's very expensive habits and business ventures; Claimant had other commodity and options accounts and had been involved in professional gambling with dogs in Arizona in Par 3 Kennels d/b/a Par 3 LP; Claimant also invested over \$1,000,000 in Ringor Corp., a penny stock company, and forgave a loan of several hundred thousand dollars to Ringor Corp.; Claimant knew that Dorfman was a non-registered person; Claimant also had borrowed money on his Russell Corporation stock with several banks and with members of his family; on several occasions Claimant was offered the use of registered approved qualified managers, but refused and defended his position and that of Dorfman in using the "short-against-the-box" strategy; Claimant spent all of his inheritance, margining his Russell Corporation stock for his various business ventures; and Claimant spent \$3,000,000 on his business ventures and was trying to defraud others for his bad business decisions.

For his response to AGE's Counterclaim, Claimant asserted that there was no basis in law or under the NASD Code of Arbitration Procedure (the "Code") for the relief AGE sought. Claimant further stated that: The NASD and NYSE rules apply to AGE; AGE had a duty to Claimant to investigate Dorfman's lack of license as an investment advisor and to take appropriate action; AGE breached its fiduciary duty to supervise; AGE breached its fiduciary duty; AGE is liable under A.R.S. §44-1991; Claimant's RICO claims are well founded; Arizona law applies to this case; punitive damages are available in this case and should be awarded against AGE; and the Counterclaim has no basis in fact or law.

RELIEF REQUESTED

In his Statement of Claim, Claimant requested an award of the following: Rescission and/or compensatory damages of at least \$3,000,000, in a specific amount to be proved at the arbitration hearing; prejudgment and postjudgment interest; treble his actual damages under RICO and AZRAC; punitive damages in an amount the arbitrators deem appropriate; recovery of his filing fees and such other fees, cost and expenses incurred in bringing this arbitration; recovery of his

reasonable attorneys' fees; such other relief in favor of Claimant as the arbitrators deemed just and appropriate under the circumstances.

In its Answer and Counterclaim, AGE requested that: Judgement be entered on its behalf on Claimant's claims, and that all costs of this proceeding be taxed against claimant; that judgement be entered in favor of AGE and against Claimant and his attorney in the amount of age's costs, including reasonable attorneys' fees incurred in defending these claims, all in an amount to be proved at hearing; and for such further relief as the panel deemed just and proper.

In their Answer, WST and Dorfman requested that the panel dismiss the Statement of Claim in its entirety, and to award them the costs and reasonable attorneys' fees incurred in defending this matter.

In his Answer, Golan requested that this panel: Deny any relief to Claimant; find that Claimant should pay Golan's cost in defending the case brought against him; and award such other relief as the panel deemed just and proper.

OTHER ISSUES CONSIDERED & DECIDED

On or about October 29, 1993, AGE filed a Motion to Strike Claimant's response to its Counterclaim. On or about November 8, 1993, Claimant filed his response to the motion.

On or about December 20, 1993, Golan filed a Motion to dismiss. Claimant filed his response on or about January 6, 1994. On or about November 17, 1994, Golan filed a Motion for a hearing and for ruling and unconditional release from this arbitration. Claimant filed his response on or about December 1, 1994.

On or about October 24, 1994, Claimant filed a motion to amend the Statement of Claim. On or about November 17, 1994, Golan filed his Objection. On or about November 11, 1994, AGE filed its response to Claimant's motion. On or about November 17, 1994, Dorfman and WST filed their response to claimant's motion. On or about November 21, 1994, AGE filed a supplemental response to Claimant's Motion to Amend. On or about November 16, 1994, Claimant filed a response to AGE's November 11, 1994 response. On or about December 1, 1994, Claimant filed a Sur-reply to AGE's supplemental response.

On or about March 4, 13, and 14, 1995, Respondents WST, Dorfman, and Golan filed requests for dismissal or to postpone the May, 1995, hearing date due to claimant's alleged non-compliance with the panel's January 30, 1995 Order. claimant filed his response on or about March 23, 1995.

On or about April 18, 1995, and May 6, 1995, Golan filed a motion for sanctions against Claimant's attorney. Claimant filed his responses on or about May 4, 1995 and May 18, 1995. On or about

July 6, 1995, Golan filed a Motion for a counterclaim. On or about July 14, 1995, Claimant filed his response to Golan's motion.

On or about June 28, 1995, Claimant filed a Motion to Dismiss AGE's Counterclaim. AGE filed its responses on July 7, and 24, 1995. On or about August 22, 1995, Claimant filed a §32© Motion to Exclude Respondents' witnesses and exhibits. On or about August 24, 1995, AGE filed its response to the motion. On or about August 19, 1995, Golan filed his response to Claimant's Motion.

After review of the aforementioned motions, along with discovery motions not set forth herein, the responses, and hearing argument from the parties, the arbitrators: Dismissed WST and Dorfman without prejudice to Claimant's legal rights in any other forum; denied Golan's Motions for dismissal, sanctions, and to File a Counterclaim; Denied AGE's Motion to Strike Claimant's Answer to its counterclaim; granted Claimant's Motion to Dismiss age's counterclaim; denied Claimant's Request to Amend the Statement of Claim; and took Claimant's §32 motion under advisement to be considered on an item-by-item basis during the course of the hearing.

During the course of the hearing, AGE made Motions to Dismiss the Statement of claim as time-barred and that it failed to assert a prima-facie case. After hearing argument from the parties, and deliberation, the panel denied the motions.

The parties have agreed that a handwritten, signed Award may be entered. 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:

A. G. Edwards & Sons, Inc. is liable for, and shall pay to Churchill P. Goree the sum of \$55,444.00 as satisfaction of his claims made herein.

Claimant's claims for RICO, AZRAC, punitive damages, and attorneys' fees are, and each of them, denied with prejudice.

Any other claims for relief/requests for damages not specifically set forth herein are, and each of them, denied with prejudice.

Each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were 34 regular hearing sessions x \$600 and four (4) pre-hearing sessions x \$300.00 = \$21,600 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43© of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$300 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,500 previously deposited with the NASD by the Claimant.

Pursuant to §43© of the Code, the NASD shall retain the non-refundable Counterclaim filing fee in the amount of \$500 and shall retain as forum fees the Counterclaim hearing session deposit in the amount of \$600 previously paid by A. G. Edwards & Sons, Inc.

Additional forum fees in the amount of \$5,700 are assessed against Claimant.

Additional forum fees in the amount of \$6,600 are assessed against A. g. Edwards & Sons, Inc..

Additional forum fees in the amount of \$7,200 are assessed against Rafael Golan.

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

CONCURRING ARBITRATORS

Dated:

Bernard W. Slater
Bernard W. Slater
Public Arbitrator, Presiding Chair

s/s

March 11, 1996

William J. Bayer
William J. Bayer
Industry Arbitrator

s/s

March 12, 1996

DISSENTING ARBITRATOR

The dissent arises out of the inability to concur that damages should be awarded against A. G. Edwards & Sons, Inc.

Robert C. Hubbard
Robert C. Hubbard
Public Arbitrator

s/s

March 7, 1996