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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Anthony N. & Alice D. Siciliano

93-04103

Name of Respondents

A.G. Edwards & Sons, Inc.
Gary Stark

REPRESENTATION

For Claimants: Adam S. Doner, Esq. and Lawrence Klayman, Esq., of Davis, Gordon & Doner, P.A., West Palm Beach, Florida.

For Respondents: M. Jane Matoesian, Esq., A. G. Edwards & Sons, Inc., St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed: October 2, 1993.

Claimant's Submission Agreement signed on September 17, 1993.

Statement of Answer filed by Respondents, A. G. Edwards & Sons, Inc., and Gary L. Stark on February 23, 1994.

Respondent, Gary L. Stark's Submission Agreement signed on January 14, 1994.

Respondent, A. G. Edwards & Sons, Inc.'s Submission Agreement signed on February 23, 1994.

HEARING INFORMATION

On December 13 and December 14, 1994, in Fort Lauderdale, Florida, hearings lasting 5 sessions were conducted.

CASE SUMMARY

The Claimants, Anthony N. Siciliano and Alice D. Siciliano ("Siciliano") filed a complaint against Gary L. Stark ("Stark") and A. G. Edwards & Sons, Inc. ("Edwards") the Respondents seeking compensatory and punitive damages for breach of contract, negligence, breach of fiduciary duty, misrepresentation and for violations of Section 10(b) of the Securities and Exchange Act of 1934. Claimants alleged that Stark recommended transactions in options for Claimant's Anthony Siciliano's account which was not suitable in light of Claimant's investment objectives, and conducted unauthorized options transactions in Claimant Alice Siciliano's account. Claimants also alleged separately that Edwards failed to properly supervise Stark, its employee.

The Respondents denied all allegations of wrongdoing. Respondents maintained that the Claimants had substantial experience investing in stocks, bonds, and options.

The Respondents in an affirmative defense submitted that the Claimants' failure to contact them regarding their transactions should bar Claimants, pursuant to the doctrines of waiver, estoppel, laches, and ratification. Respondents submitted the additional affirmative defenses that the Claimants failed to notify the Respondents or register any complaints with the Respondents regarding their accounts in accordance with the terms of their Customer's Agreement signed with Respondents, that the Claimants expressly authorized the transactions in their accounts, failed to act promptly and with due diligence to mitigate their damages after the Claimants knew or should have known of the alleged acts and omissions of which they complained and failed to exercise the degree of care over their affairs and investments which ordinarily prudent investors would exercise. Respondent also submitted the affirmative defenses that the Claimants were aware from the outset of the risks associated with investing in securities and options and voluntarily assumed such risks, and that the damages allegedly suffered by the Claimants were caused by unforeseeable market factors and conditions. Respondents further allege that the Claimants' claims, including those brought pursuant to Section 10(b) of the Securities and Exchange Act of 1934, were barred by the applicable statutes of limitations; and since there is no private cause of action for the violation of the NASD Rules of Fair Practice, Claimants' Statement of Claim failed to state a claim upon which relief could be granted.

RELIEF REQUESTED

The Claimants requested damages of \$31,241.00 in compensatory damages plus \$8,869.00 in interest regarding Anthony Siciliano's account, and \$1,606.61 in compensatory damages regarding Alice Siciliano's account. The Claimants' also requested punitive damages, treble and other damages in addition to

compensatory as permitted by state law, legal fees, expert fees, hearing expenses, and any other such relief as the panel of arbitrators deems just and proper.

The Respondents requested the dismissal of the Statement of Claim in its entirety, and that the Respondent be awarded an amount equal to its costs and expenses incurred in defending this action, including reasonable attorney 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 A.G. Edwards & Sons, Inc. and Gary L. Stark are found not liable and, therefore, all claims against them are hereby dismissed.
2. Respondents' request for costs and attorney fees are denied.

OTHER COSTS

Other than as provided below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed the following Forum Fees in the amount of \$3,750.00 (five sessions x \$750 per session)

Claimants are assessed \$3,750.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$3,000.00 payable to the National Association of Securities Dealers, Inc.

The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.

9502039

Concurring Arbitrators' Signatures .

Name

Public/Industry

/s/
William Nortman, Esq.

Industry

/s/
Burton I. Manis, Esq.

Public

/s/
Gary M. Lanuau, Esq.

Public

Date of Decision: February 6, 1995