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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

10/94

In the Matter of the Arbitration Between

Name of Claimants

Richard J. Liberante and Mary David

93-04548

Name of Respondents

A.G. Edwards & Sons, Inc.
Peter Barrett

REPRESENTATION

For Claimants Richard J. Liberante ("Liberante") and Mary David ("David"): Timothy L. Burke, Esq. of UAW Legal Services Plan located in Cheektowaga, New York.

For Respondent A.G. Edwards & Sons, Inc.: Jeff Jamieson, Esq. of A.G. Edwards & Sons, Inc. located in St. Louis, Missouri.

For Respondent Peter Barrett: Respondent Peter Barrett appeared pro se.

CASE INFORMATION

Statement of Claim filed: November 1, 1993.

Claimants' Submission Agreement signed on: February 23, 1994.

Statement of Answer filed by Respondent, Edwards on: February 3, 1994.

Respondent, Edwards' Submission Agreement signed on: February 3, 1994.

Statement of Answer filed by Respondent, Barrett on: June 14, 1994.

Respondent, Barrett's Submission Agreement signed on: Respondent Barrett did not submit an executed Submission Agreement as required pursuant to Section

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25(b)(1) of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Date/Sessions: September 20, 1994 / Two Sessions

Hearing Location: The Holiday Inn located at 620 Delaware Avenue in Buffalo, New York.

CASE SUMMARY

Claimants alleged that Respondent Barrett informed Liberante that Barrett was in contact with a high ranking officer or director of Maxcard Systems International ("Maxcard") and that Maxcard was negotiating with Motorola, Toshiba and Zenith for the purchase of Maxcard's patent rights. Claimants further alleged that based upon Respondent Barrett's representations, Claimants purchased 10,000 shares of Maxcard at \$.33 on June 17, 1992; 10,000 shares at \$.22 on September 22, 1992; and 10,000 shares at \$.16 on December 1, 1992 for a total purchase price of \$7,100. Claimants also alleged that none of the purchases were solicited by Claimant but that the confirmations sent on the transactions were all marked "unsolicited." Claimants alleged that Respondents sent Claimants no prospectus or writing on Maxcard and that Claimants relied on Respondent Barrett's representations. Claimant further alleged that at the time Claimants filed their statement of claim, Maxcard was basically worthless.

Respondent Edwards maintained that Claimants opened the joint account in question in March 1992 and from March 1992 to May 1993 Barrett was the investment broker assigned to the account. Respondent Edwards further maintained that the New Account Card for the joint account indicated that the account's objectives were speculation and growth. Respondent Edwards next maintained that on February 2, 1993 Claimants executed an Option Account Agreement for their joint account. Respondent Edwards maintained that during the entire time Liberante maintained his joint account with Edwards, he engaged in the purchase and sale of speculative securities.

Respondent Edwards maintained as an affirmative defense that as a result of Claimants' failure to object or notify Edwards of the acts and omissions of which Claimants complain within ten (10) days of receipt of written confirmations, account statements and other documents evidencing or setting forth transactions in Claimants' account, Claimants are barred from recovery under Claimants' Customer Agreement with Edwards. Respondent Edwards further maintained as an affirmative defense, that Claimants' failure to complain to Edwards promptly after Claimants discovered, or reasonably should have discovered, the alleged acts

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or omissions barred Claimants from recovery under the doctrines of ratification, account stated, estoppel, waiver and laches because Edwards relied upon Claimants' silence. Respondent Edwards further maintained as an affirmative defense that Claimants failed to mitigate damages, and failed to exercise the degree of care over their investments which ordinarily prudent investors would exercise. Respondent Edwards maintained as an additional affirmative defense that Claimants were aware of the risks associated with investing in securities and that the alleged damages suffered by Claimants, if at all, were a result of unforeseeable market forces.

Respondent Barrett maintained that Liberante had a history of speculative investments and that the investment at issue in this matter, Maxcard, was strictly speculative. Respondent Barrett further maintained that at all times Claimant Liberante was fully aware of the fact that Maxcard was a speculative investment. Respondent Barrett next maintained that he informed Claimant Liberante that Maxcard was a speculative investment and that Barrett in no way promised or guaranteed anything to Claimants. Respondent Barrett maintained that at all times he was acting under the training, guidance and supervision of Edwards as their registered representative.

RELIEF REQUESTED

Claimants requested:

1. Return of Claimants' investment of \$7,100.

Respondent Edwards requested:

1. That judgment be entered on behalf of Respondent and against Claimants on the Claims of Claimants in this arbitration proceeding; and
2. That all costs of this arbitration proceeding, including, but not limited to, forum fees and Respondent's reasonable costs and expenses incurred in defending this matter, be taxed against Claimant; and
3. Such further relief as the arbitration panel deems appropriate.

Respondent Barrett requested:

1. That Claimants' claims be dismissed.

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AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims against respondents are dismissed.
2. Each party shall bear its own costs and expenses including attorneys' fees.

FORUM FEES

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

2 sessions X \$200 = \$400 minus hearing session deposit of \$200 = net \$200 due.

Forum fees Assessed Against:

1. Claimants are assessed \$400 which represents the total amount of forum fees due, less \$200 hearing session deposit paid, leaving \$200 due. Claimants are liable, jointly and severally, and shall pay to the NASD the sum of \$200.

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

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Arbitrator's Signature
Name

Joseph J. Kunk Jr.

Public/Industry

Public Arbitration

Date of Decision: October 12, 1994

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STATE OF:

SS:

COUNTY OF:

On this 10 day of October, 1994, before me personally appeared Joseph F. Rub Jr. know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Holly L. Hennen

HOLLY L. HENCHEN
Notary Public in the State of New York
MONROE COUNTY
Commission Expires Feb. 28, 19 96