

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Robert L. Culver

94-00144

Name of Respondent(s)

A.G. Edwards & Sons, Inc.
John Griner

REPRESENTATION

For Claimant Robert L. Culver: J. Pat Sadler, Esq., of the law firm of Sadler and Associates, Atlanta, GA.

For Respondents A.G. Edwards and Sons, Inc. and John Griner: Jeff Jamieson, Esq., in-house counsel at A.G. Edwards and Sons, Inc.

CASE INFORMATION

Statement of Claim filed: January 13, 1994.

Claimant's Submission Agreement signed on: December 16, 1993.

Joint Statement of Answer filed by Respondents A.G. Edwards and Sons, Inc. ("Edwards") and John Griner ("Griner") on: March 30, 1994.

Respondent A.G. Edwards and Sons, Inc.'s Submission Agreement signed on: March 24, 1994.

Respondent John Griner's Submission Agreement signed on: March 3, 1994.

HEARING INFORMATION

Hearing Date/Session: November 14, 1994 / Two Sessions.

Hearing Location: NASD offices located in Atlanta, GA.

CASE SUMMARY

Claimant alleged against Respondents A.G. Edwards and Sons, Inc. and John Griner claims for unsuitability, churning, breach of fiduciary duty, and misrepresentation and omissions of material facts. Claimant further alleged that Respondents were aware at the time of opening the account in September of 1991 that Claimant was an inexperienced and novice investor and that the funds used to open the investment account represented the proceeds from a life insurance policy (received upon the death of Claimant's wife). Claimant further alleged that he suggested the strategy to "buy and hold large, exchange listed companies and write calls against the underlying shares" - a strategy allegedly recommended by Claimant's family member. Claimant conceded that John Griner adhered to this strategy, which was conservative and a desirable activity level for a single father working two jobs and attending school, until the final quarter of 1991.

Claimant further alleged that during the first six weeks of 1992 Claimant's buy and hold strategy was replaced upon Griner's recommendation with a frequent and aggressive trading strategy. Claimant further alleged that Claimant was coerced into signing margin papers under the guise that the papers were needed to upgrade Claimant's account. Claimant alleged that based on Respondents' representation that the account was trading on a profit, followed every recommendation made to him. Claimant further alleged that his reliance on Respondents was so complete that in March of 1992 Claimant, upon Griner's recommendation, disregarded "activity letters". As a result, Claimant alleged that it was not until June of 1992 that Claimant became aware that his account was mishandled when his average balance of \$30,000-\$40,000 dropped to \$18,977.00. Claimant further alleged that upon examining his account he learned that Respondents churned his account and that in a 181 day period from January to June 1992, ninety-three trades were executed which effectually replaced Claimant's three large capitalization stocks with a series of speculative stocks and new issues. Claimant further alleged that Respondents' recommendations were unsuitable and the level of activity was excessive given Claimant's conservative investment objective. Claimant further alleged that Respondents' primary motivation was the generation of profits in opposition to preservation of capital and protection of his financial interests. Lastly Claimant alleged that the entire sequence of events constituted a common law fraud and that Respondents are

liable under federal and state securities laws.

Respondents maintained that Claimant's account was unsolicited and that Claimant did not amend his Option New Account Card ("ONA"). Respondents further maintained that Claimant executed on Option Account Agreement which provided that (1) Claimant understood the risks and obligations and, (2) Claimant was capable of bearing the financial risks. Respondents maintained that Claimant was aware of the tax considerations and transaction costs, primarily commissions, involved with options investing. Respondents further alleged that Claimant executed an Agreement to open a Total Asset Account which stated "Edwards [was] under no obligation to keep [Claimant] abreast of developments in the market... and that [Claimant was] responsible for remaining informed..." Respondents further maintained that Claimant was aware that Edwards was in the business of generating brokerage commissions and that the more trades made, the higher the commissions. Respondents further maintained that each transaction in Claimant's account was confirmed to Claimant by Respondents.

Respondents further maintained that Claimant withdrew a total of \$82,265.43 for personal use which caused disadvantageous liquidations which lead to an overall loss of \$1,385.65. Respondents further maintained that they are not responsible for how Claimant allocated his funds for his personal use. Furthermore, Respondents maintained that Claimant did not complain or contact the manager of the branch office following correspondence from the manager inquiring whether Claimant's investment objectives were being met.

Respondents asserted the following affirmative defenses: Claimant is barred from recovery under the Claimant's Customer Agreement because Claimant failed to object to or notify Respondents of the acts and omissions within 10 days of receipt of written confirmations, account statements and other documents; Claimant is barred under the doctrines of ratification, account stated, estoppel, waiver and laches because Respondents relied on Claimant's silence; Claimant failed to act with due diligence and mitigate damages; Claimant contributed to his damages by his failure to exercise the degree of care of a prudent investor; Claimant voluntarily assumed the risks; Respondents are not liable for Claimant's losses because Claimant's damages are the result of unforeseeable market factors; Claimant failed to state a claim upon which relief can be granted; and, each count of the Statement of Claim is barred by the applicable statute of limitations.

RELIEF REQUESTED

Claimant requested that the sum of \$72,970.00 in damages be assessed against Respondents which represents \$20,840.00 in compensatory damages, \$8,800.00 in interest, \$1,000.00 in attorneys' fees, \$650.00 in filing fees, \$41,680.00 in punitive damages or a sum sufficient to deter Respondents from such future actions.

Respondents requested a dismissal of all claims against them and that all costs of this proceeding including forum fees and reasonable costs and expenses be assessed against Claimant.

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. All claims by the Claimant against Respondents are dismissed.
2. The Claimant's request for punitive damages is denied.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

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

2 sessions x \$500.00 = \$1,000.00 less Claimant's hearing session deposit (\$500.00) = net \$500.00 due.


The Claimant be and hereby is liable and shall pay to the NASD the sum of \$500.00 representing forum fees.

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

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ARBITRATORS' SIGNATURES

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A. Keith Logue, Esq.
Public Arbitrator

A handwritten signature in black ink, appearing to read 'Roger A. Kirschenbaum', written over a horizontal line.

Roger A. Kirschenbaum, Esq.
Public Arbitrator

A handwritten signature in black ink, appearing to read 'William A. Lobb', written over a horizontal line.

William A. Lobb
Industry Arbitrator

Date of Decision: December 14, 1994