

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ralph F. and Florence W. Williams, JT TEN

94-00157

Name of Respondents

A.G. Edwards & Sons, Inc.
Edward Bowne

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 14, 1994, Claimants Ralph F. and Florence W. Williams, who appeared Pro Se, alleged that Respondent Edward Bowne ("Bowne"), a broker at Respondent A.G. Edwards & Sons, Inc. ("A.G. Edwards"), advised them to immediately close out their accounts with another firm and to bring him the funds as soon as they received them. Claimants alleged that Respondent Bowne represented to them that he would invest their money in a no-load mutual fund, which would be consistent with their dual goals of increasing current income while leaving capital intact. Claimants further alleged that Respondent Bowne invested their money in the Franklin U.S. Government Fund and the Putnam Utilities Growth and Income Fund, both of which are load funds, which caused an immediate reduction in their total capital with Respondents. Claimants contended that they were told by Respondent Bowne that he had no prospectuses available for either fund at the time they were considering investing in them, but that the funds were appropriate for their investing goals. Claimants contended that they received a dividend check from their Putnam Utilities Growth and Income Fund IRA account, although they requested that Respondent Bowne reinvest these dividends. Claimants further contended that Respondent Bowne complicated this mistake by changing the dividend distribution of the Franklin U.S. Government Fund IRA to have the dividends reinvested, rather than having the Putnam Utilities Growth and Income fund IRA dividends

reinvested, which was also contrary to their instructions. As a result of the above, Claimants contended that they have suffered damages for which the Respondents should be held liable.

Respondents A.G. Edwards & Sons, Inc. and Edward Bowne, through Respondent A.G. Edwards & Sons, Inc.'s in-house counsel Phyllis A. Hartrich, Esq., St. Louis, Missouri, maintained that Respondent Bowne was approached by Claimants seeking investment advice, and that he never advised Claimants to immediately close out their accounts with their prior broker. Respondents further maintained that Respondent Bowne never assured Claimants of his ability to handle no-load mutual funds, and that Respondent A.G. Edwards does not represent any no-load mutual funds and could not execute an order to make such a purchase. Respondents further maintained that the Claimants' primary stated objective when making the investments in question was income and/or growth, with safety of principal being a secondary concern. Respondents contended that Respondent Bowne discussed with Claimants the advantages and disadvantages of growth and income types of investments, and recommended the Putnam and Franklin funds while giving the Claimants a prospectus detailing each fund. Respondents further contended that the prospectuses clearly indicated that these mutual funds involve initial sales charges, which was consistent with the funds' description given to the Claimants by Respondent Bowne when he recommended their purchase. Respondents maintained that the Claimants' alleged immediate drop in income, when compared to their prior account income, was of such a nominal amount as to be insignificant for purposes of comparison. Respondents further maintained that the "Mutual Fund Order Ticket", which was executed by the Claimants when their accounts were opened with Respondents, reflects that the Putnam fund dividends were to be paid in cash, with capital gains to be reinvested. Respondents contended that Claimant Florence Williams gave her consent to have partial distributions made from her IRA, and that the only distribution being made from this account was the payment of these Putnam fund dividends. Respondents further contended that had this Claimant instructed Respondents to reinvest dividends in this account, there would have been no need to complete the distribution request. The Respondents maintained that after the first distribution, the Claimants requested that Putnam fund dividends be reinvested, and that Respondent Bowne complied with this request. Respondents further maintained that they do not know why the Putnam Company, Inc., where the fund shares were held, made a second distribution to Claimants, rather than reinvest the sum. As a result of the above, Respondents maintained that they should not be held liable in this matter.

RELIEF REQUESTED

Claimants Ralph F. and Florence W. Williams requested \$2,312.93 in actual damages, plus income that would have been derived from this money had it been invested in no-load funds, and income that they should have derived from the re-investment of their dividend of \$728.68 from the Putnam Fund.

Respondents A.G. Edwards & Sons, Inc. and Edward Bowne requested that the Claimants' Statement of Claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Stan West, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on January 4, 1994, by Respondent A.G. Edwards & Sons, Inc. on March 1, 1994, and by Respondent Edward Bowne on February 8, 1994.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Edward Bowne is liable and shall pay to Claimants Ralph F. and Florence W. Williams \$2,312.93 in actual damages.
2. Respondent Edward Bowne is liable and shall pay to Claimants Ralph F. and Florence W. Williams simple interest at the rate of 6% per annum from February 1, 1992 to June 1, 1994.
3. The claims of Claimants Ralph F. and Florence W. Williams against Respondent A.G. Edwards & Sons, Inc. are dismissed in their entirety.
4. The parties shall bear their respective costs.
5. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

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AFFIRMATION

I, **STAN WEST**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: June 27, 1994