

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Stephen R. and Susan M. Berger

and

94-00358

A.G. Edwards & Sons, Inc.
and James Laughlin

REPRESENTATION OF PARTIES

Claimants, Stephen R. and Susan M. Berger, were represented by Stuart R. Berkowitz, Esq. of Platke & Berkowitz, St. Louis, MO.

Respondents, A.G. Edwards & Sons, Inc. and James Laughlin, were represented by M. Jane Matoesian, Esq. and Norman Buchvar, Esq. of A.G. Edwards & Sons, Inc., St. Louis, MO.

CASE INFORMATION

The Statement of Claim was filed on or about January 31, 1994. An Amendment to the Statement of Claim was filed on or about July 25, 1994. The Submission Agreements of Claimants, Stephen R. Berger and Susan M. Berger, were signed on January 14, 1994.

The Joint Statement of Answer was filed by Respondents, A.G. Edwards & Sons, Inc. and James Laughlin, on or about February 18, 1994. The Submission Agreement of Respondent, A.G. Edwards & Sons, Inc., was signed on March 23, 1994 by Douglas L. Kelly, Vice President and Secretary. The Submission Agreement of Respondent, James Laughlin, was signed on February 16, 1994.

HEARING INFORMATION

A pre-hearing conference was held on March 13, 1995 for a total of one (1) pre-hearing session before one arbitrator.

The hearing was held on March 27 and 28, 1995 in St. Louis, MO for a total of four (4) hearing sessions before three arbitrators.

CASE SUMMARY

Claimants, Stephen R. and Susan M. Berger ("Berger"), alleged that A.G. Edwards & Sons, Inc. ("A.G. Edwards"), by and through its

agent, James Laughlin ("Laughlin"), made intentional misrepresentations and made omissions of material fact thereby inducing the Claimants to purchase American Savings Bank stock. As a result of an accident, Susan Berger was a quadriplegic and received \$800,000.00 in settlement funds from a lawsuit. Claimants asserted that they were unsophisticated investors with minimal investment experience and claimed a need to invest the settlement funds in order to provide for Susan Berger. Claimants opened an account at A.G. Edwards with the settlement money allegedly based on Laughlin's recommendation. The Claimants contended that Laughlin persuaded Stephen Berger into believing he could buy and sell stocks successfully in order to finance Susan Berger's future medical care. Claimants further contended that Laughlin motivated the Claimants into trading very aggressively while rarely discussing the risks. As alleged, Laughlin aggressively solicited the Claimants to purchase stock in American Savings Bank suggesting that it was a "no lose" investment and, in order to further induce the Claimants to invest in the stock, Laughlin made a conference call to an unnamed third party who assured Berger that a buy-out would occur shortly at a sharply higher price. Based on the alleged pressure and inducements made by Laughlin, Claimant purchased 5,000 shares of American Savings Bank stock on October 25, 1988 for a total of \$87,461.06 plus costs and commissions. Through an oversight, Claimants did not place a stop loss order on the purchase as Stephen Berger did on most of his investments. When the price of the stock rose shortly after the purchase, Berger contacted Laughlin in order to sell the stock and make a small profit yet Laughlin allegedly convinced Berger to continue to hold the stock. As the price of the stock dropped, Laughlin allegedly encouraged the Claimants to ride out the down side. In August, 1990, Claimants transferred their account with the American Savings Bank stock then worth \$2.00 a share to another broker dealer. Claimants made other specific allegations against Laughlin and A. G. Edwards of fraud, deceit, negligence, breach of fiduciary duty, negligent misrepresentation, breach of the implied covenant of good faith and fair dealing, control person liability, violations of NYSE 342, 401 and 405 and violations of the NASD Rules of Fair Practice, Article III, Sections 2 and 27.

Respondents, A.G. Edwards & Sons, Inc. and James Laughlin, denied all of the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimants represented upon opening the account that they had a net worth of \$1,000,000.00, an approximate annual income of \$100,000.00 and ten years of investment experience. Respondents contended that the Claimants did not desire conservative, long-term growth investments, against Laughlin's recommendations, and failed to acknowledge that the account had a net gain of approximately \$72,000.00 while complaining only about the purchase of American Savings Bank stock. Respondents asserted many affirmative defenses, including, but, not

limited to, failure to state a cause of action, failure to register a complaint within ten days after receipt of the confirmation as provided in the Customer's Agreement, all transactions in the account were executed with the express authorization of the Claimants, doctrines of waiver, estoppel, laches and ratification, failure to mitigate damages, failure to exercise the degree of care over affairs and investments which an ordinary prudent investor would exercise whereby barring the Claimants by their own contributory negligence and/or comparative fault and the claims are barred by all applicable statutes of limitation.

RELIEF REQUESTED

Claimants, Stephen R. and Susan M. Berger, requested an award in the amount of rescission of the investments and damages for the loss of value in the redemption of the investments or, in the alternative, compensatory damages in the amount of \$116,404.22 plus interest, costs of arbitration, attorneys fees, expert fees and punitive damages in an amount to be determined by the panel.

Respondents, A.G. Edwards & Sons, Inc. and James Laughlin, requested that the claims asserted against it be denied in its entirety and that it be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing, the panel granted the Claimants' oral request that the Amendment to the Statement of Claim filed on or about July 25, 1994 withdrawing paragraphs 75 through 80 of the Statement of Claim be withdrawn and resubmitted pursuant to Section 39 of the Code of Arbitration Procedure.

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:

1. All claims made by Claimants, Stephen R. Berger and Susan M. Berger, are hereby dismissed and denied in their entirety;
2. Claimants request for punitive damages are hereby dismissed and denied in their entirety; and

3. The parties shall bear their own costs, including attorneys' fees, except where specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300 for each pre-hearing conference. There were four (4) hearing sessions x \$750.00 plus one (1) pre-hearing session x \$300.00 = \$3,300.00 in forum fees. Pursuant to §43(b) 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(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants.

Claimants, Stephen R. and Susan M. Berger, are hereby assessed and shall pay to the NASD additional forum fees in the amount of \$800.00. Respondents, A.G. Edwards & Sons, Inc. and James Laughlin, are hereby assessed jointly and severally and shall pay to the NASD forum fees in the amount of \$1,750.00.

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

Anthony J. Soukenik, Esq.
Anthony J. Soukenik, Esq.
Public Arbitrator, Presiding Chair

Keith E. Mattern, Esq.
Keith E. Mattern, Esq.
Public Arbitrator

Timothy M. Kelly, Esq.
Timothy M. Kelly, Esq.
Industry Arbitrator

Date of service: June 7, 1995