

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Richard L. Ming
James L. Ming, Jr.

NASD Arbitration
No. 94-01513

Name of Respondent(s)

A.G. Edwards & Sons, Inc.
John M. Rogers

REPRESENTATION

For Claimants: Bruce R. Safran, Esq., Tarzana, California

For Respondents: Clay L. Grumke, Esq., A.G. Edwards & Sons, Inc.,
St. Louis, Missouri

CASE INFORMATION

Statement of Claim filed: April 22, 1994

Claimants' Submission Agreements signed: April 21, 1994

Joint Statement of Answer filed by Respondents: July 8, 1994

Respondents' Submission Agreements signed as follows:

A.G. Edwards & Sons, Inc.: June 20, 1994

John M. Rogers: June 29, 1994

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): June 6, 1995 (two sessions)
June 7, 1995 (one session)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimants alleged that Respondents handled Claimants' account in a manner inconsistent with their objectives and inconsistent with Respondents' representations as to the manner in which Claimants' account was to be handled; that A.G. Edwards & Sons, Inc. (A.G. Edwards) failed to properly supervise Respondent John M. Rogers (Rogers); and that Respondent Rogers violated his fiduciary duty to Claimants. Claimants further alleged the following claims with respect to various stocks and options transactions in their account: 1) violation of Sections 10(b) and 20 of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities Exchange Commission; 2) common law fraud and misrepresentation; 3) breach of contract; 4) breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing; 5) suitability; 6) churning; 7) violation of Title IX of the Organized Crime Control Act of 1970 (RICO); and 8) violation of New York Stock Exchange, Inc. 342, 401 and 405 Know Your Customer Rules and National Association of Securities Dealers, Inc. (NASD) Rules of Fair Practice, Article III Section 2 Recommendations to Customers.

Respondents denied any liability to Claimants and alleged that this case involves two well-educated school teachers who traded in securities options prior to dealing with A.G. Edwards. Respondents further alleged that during the time that Claimants had accounts with A.G. Edwards, they engaged in predominantly unsolicited option trades and received monthly statements, confirmations of every trade and periodic activity letters from A.G. Edwards which explicitly stated the results of the activity in their account; that Claimants refused to sign the activity letters sent by A.G. Edwards in 1990 which the Claimants acknowledged receiving, and A.G. Edwards restricted the trading in their accounts; that despite substantial losses, the Claimants threatened to sue A.G. Edwards in 1990 for restricting the trading in their account; and that almost four years from the time that the restrictions were placed on the account at A.G. Edwards, the Claimants decided to bring a lawsuit alleging various improprieties by Respondents in an effort to recoup losses created by the unsolicited transactions they

conducted in their account, despite continuing to trade options at another firm after leaving A.G. Edwards. Respondents also asserted various defenses. In their Counterclaim, Respondents alleged that pursuant to Claimants' Customer's Agreement and Claimants' Option Account Agreement with A.G. Edwards, Claimants agreed to pay A.G. Edwards any expenses, including attorneys' fees, incurred by A.G. Edwards in defense of an action brought by Claimants should A.G. Edwards prevail.

RELIEF REQUESTED

Claimants requested damages according to proof as follows:

1. For \$420,000.00 which represents Claimants' losses;
2. For punitive damages according to proof;
3. For attorney's fees, interest, costs and disbursements; and
4. For such other and further relief as may be deemed appropriate.

Respondents requested that all of Claimants' claims be dismissed in their entirety and that Respondents be awarded its expenses, including attorney's fees, pursuant to its contractual obligation provision with Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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, the evidence presented at the hearing and post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimants, including the claim for punitive damages are dismissed.

2. Respondents' Counterclaim is denied.

3. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$750.00 hearing session deposit previously deposited by the Claimants. Forum fees are to be split between Claimants and Respondents and are calculated as follows:

Three hearing sessions @ \$750.00/session	=	\$2,250.00
Total fees assessed	=	\$2,250.00

Claimants' share, jointly and severally (50%)	=	\$1,125.00
Credit for hearing deposit	=	\$ 750.00
Balance due	=	\$ 375.00

Respondents' share, jointly and severally (50%)	=	\$1,125.00
Balance due	=	\$1,125.00

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Elizabeth A. Copley, Esq.	Public Arbitrator
Herbert M. Schoenberg, Esq.	Public Arbitrator
Elwood A. Crandall	Industry Arbitrator

Concurring Arbitrators' Signatures



Elizabeth A. Copley, Esq.

Herbert M. Schoenberg, Esq.

Elwood A. Crandall

Served 7/28/95

Date of Decision: 7/14/95

Concurring Arbitrators' Signatures

Elizabeth A. Copley, Esq.

Herbert M. Schoenberg

Herbert M. Schoenberg, Esq.

Elwood A. Crandall

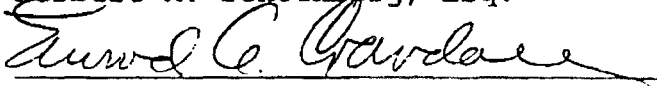
Served 7/28/95

Date of Decision: _____

Concurring Arbitrators' Signatures

Elizabeth A. Copley, Esq.

Herbert M. Schoenberg, Esq.



Elwood A. Crandall

Served 7/28/95

Date of Decision: 2/7/95