

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

A.G. Edwards & Sons, Inc.,

Claimant,

and

No. 95-00402

Milt LaPanta,

Respondent,

REPRESENTATION OF PARTIES

Claimant A.G. Edwards & Sons, Inc. was represented by Norman S. Buckvar, Esquire, of A.G. Edwards & Sons, Inc., located in St. Louis, Missouri.

Respondent Milt LaPanta was represented by Charles Clayton, Esquire, of Minneapolis, Minnesota.

CASE INFORMATION

Claimant A.G. Edwards & Sons, Inc.'s Statement of Claim was filed on or about January 24, 1995. Claimant A.G. Edward & Sons, Inc.'s Reply to Counterclaim was filed on or about April 10, 1995. Claimant A.G. Edward & Sons, Inc.'s Submission Agreement was signed on January 16, 1995, by Stephen G. Sneeringer, Vice President and Counsel of A.G. Edwards & Sons, Inc.

Respondent Milt LaPanta's Statement of Answer and Counterclaim was filed on or about March 22, 1995. Respondent Milt LaPanta's Submission Agreement was signed on March 15, 1995.

HEARING INFORMATION

A pre-hearing conference was held on April 12, 1996, for one (1) sessions.

The hearing was held on: April 30, 1996, for one (1) sessions;
 December 10, 1996, for two (2) sessions; and
 December 11, 1996, for two (2) sessions.

The hearing was held in Minneapolis, Minnesota.

CASE SUMMARY

Claimant A.G. Edwards & Sons, Inc. ("Claimant") alleged that Respondent Milt LaPanta ("Respondent") refused and failed to reimburse Claimant pursuant to his customer's agreement. Claimant stated that Respondent entered into this customer's agreement on or about October 8, 1993 in relation to a brokerage account he opened on July 27, 1992. Claimant asserted that on May 2, 1994 and on May 4, 1994, Respondent agreed to purchase a total of 6,000 shares of Epitope, Inc. for a total cost of \$106,472.45, but failed to make the required payment for these purchases by the settlement date. Consequently, according to Claimant, it sold these shares on the open market, pursuant to federal securities law, for \$93,503.35, which resulted in a net loss to Respondent of \$13,084.99. Claimant argued that Respondent is liable for this loss plus interest accruing at 9½% broker call-rate for a total debt of \$14,034.44, which he has failed and refused to pay contrary to his contractual obligation.

Respondent denied the allegations set forth in the Statement of Claim. Respondent stated that the shares of Epitope, Inc. were purchased in his account based on the claimed inside information by James Henderson, a representative of Claimant. According to Respondent, the Epitope, Inc. stock resulted in a loss, instead of a rise in price as James Henderson claimed would result. Respondent further stated that James Henderson made several other similar transactions like this one based on claims of insider information and that he even made an unauthorized sale and purchases in Respondent's account.

Respondent alleged that James Henderson violated his duty as a broker in dealing on "insider information" in inducing Respondent to purchase securities. Respondent further alleged that even though he did not execute an agreement for discretionary authority, James Henderson exercised discretionary authority over Respondent's account by selling securities and purchasing other securities. As a result, Respondent asserted that Claimant is liable for Respondent's loss in the amount of \$130,713.37.

Claimant denied the allegations set forth in the Counterclaim. Claimant made the following defenses to the Counterclaim: (1) the Counterclaim fails to state a claim upon which relief can be granted; (2) Respondent failed to immediately notify Claimant of any unauthorized trading and has thus accepted the transactions at issue and is thereby precluded from complaining about them; (3) Respondent is barred from recovering from Claimant under the customer's agreement and under § 8-319 of the Uniform Commercial Code as enacted in the state of Minnesota due to his failure to object or notify Claimant of the alleged acts and omissions within ten days after receipt of written confirmations, account statements, and other documents; (4) Respondent is barred from recovering from Claimant under the doctrines of ratification, account stated, estoppel, waiver, and laches; (5) Respondent is partially or wholly barred from recovering alleged damages from Claimant due to Respondent's comparative negligence; (6) the Counterclaim is barred by the applicable federal and state statutes of limitation; and (7) Respondent has waived or is estopped to assert any claims against Claimant due to his conduct in his dealings with Claimant.

RELIEF REQUESTED

Claimant A.G. Edwards & Sons, Inc. requested an award for compensatory damages in the amount of \$14,034.99, plus interest and all costs and expenses, including attorney fees. Claimant A.G. Edwards & Sons, Inc. also requested that the Counterclaim be dismissed in its entirety and that it be awarded its expenses, including attorney fees, in defending the Counterclaim.

Respondent Milt LaPanta requested that the claims asserted against him be dismissed and that he be awarded compensatory damages in the amount of \$130,713.37.

OTHER ISSUES CONSIDERED & DECIDED

Initially, this matter was scheduled for April 30, 1996. At the beginning of the hearing, the arbitrator withdrew for undisclosed reasons, and the hearing was rescheduled. The parties were not charged for this session and the case was rescheduled.

The parties have agreed that the Award in this matter may be executed in 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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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. That Respondent Milt LaPanta is liable for and shall pay Claimant A.G. Edwards & Sons, Inc. for compensatory damages in the amount of \$13,084.99;
2. That Respondent Milt LaPanta is liable for and shall pay Claimant A.G. Edwards & Sons, Inc. for interest in the amount of \$3,432.55;
3. That Respondent Milt LaPanta is liable for and shall pay Claimant A.G. Edwards & Sons, Inc. for expenses in the amount of \$2,565.20;
4. That the Counterclaim filed by Respondent Milt LaPanta against Claimant A.G. Edwards & Sons, Inc. is hereby denied in its entirety with prejudice; and
5. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$300 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing conference session x \$300 = \$300, and there were four (4) hearing sessions x \$300 = \$1,200 in forum fees. Total forum fees are \$300 + \$1,200 = \$1,500. Pursuant to §10332(b) of the NASD Code of Arbitration Procedure (the "Code") 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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant A.G. Edwards & Sons, Inc.

Claimant A.G. Edwards & Sons, Inc. is liable for and shall pay the member surcharge pursuant to §10333 of the Code in the amount of \$200.

Respondent Milt LaPanta is liable for and shall pay his non-refundable filing fee in the amount of \$200 and hearing session deposit in the amount of \$300 for the filing of his counterclaim. Pursuant to §10332(c) of the Code.

Respondent Milt LaPanta is liable for and shall pay forum fees in the amount of \$1,700 (= \$1,500 total forum fees - \$300 hearing session deposit by Claimant A.G. Edwards & Sons, Inc. + \$500 forum fees for counterclaim filed by Claimant Milt LaPanta).

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ D. Randall Blohm
D. Randall Blohm, Esquire
Public Arbitrator, Presiding Chair

January 29, 1997

/s/ George A. Beck
George A. Beck, Esquire
Public Arbitrator

January 30, 1997

/s/ Lawrence Furman
Lawrence Furman
Industry Arbitrator

February 3, 1997