

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joseph J. and Helen A. Terry JTWROS

95-01350

Name of Respondents

A.G. Edwards & Sons, Inc.
Josephthal Lyon & Ross, Inc.
John Valdes

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 17, 1995, Claimants, Joseph J. and Helen A. Terry JTWROS ("Claimants"), who appeared Pro Se, alleged that Respondents, A.G. Edwards & Sons, Inc. ("A.G. Edwards") and Josephthal Lyon & Ross, Inc. ("Josephthal"), through their employee, Respondent, John Valdes ("Valdes"), "highly recommended Media Logic stock with projection earnings and future growth of the company." Claimants further alleged that Valdes estimated the stock rising 5 or 6 points in a months time and then selling it off to buy Ryland Homes, which he said was "a sleeper". Claimants contended that they purchased 250 shares of Media Logic from Respondent Valdes on April 6, 1993, at 20 1/4, which began to decline immediately. Claimants further contended that they purchased an additional 750 shares from Valdes when he left A.G. Edwards and moved to Josephthal, because of information given to them by Valdes, information which Claimants now allege to be false. Claimants alleged that Valdes left A.G. Edwards due to a grievance and that he also left Josephthal due to a disagreement there. Claimants contended that they suffered a loss due to Respondents' misinformation when they sold all of their Media Logic shares on December 3, 1993 at 4 7/8. As a result of the above, Claimants alleged that they have suffered a loss for which Respondents should be held liable.

Respondent, A.G. Edwards & Sons, Inc., through its representative and in-house counsel, Phyllis A. Hartrich, Esq., maintained that Claimant, Joseph J. Terry, opened a single account on or about April 6, 1993, on which his wife Helen A. Terry was not named, and therefore, she does not have standing in this suit against A.G. Edwards. A.G. Edwards further maintained that Claimant had in excess of 25 years of experience with stocks and bonds and stated his investment objectives as trading and growth. A.G. Edwards contended that Claimant's purchase of Media Logic stock occurred at the company's year-end at which time the company had reported earnings per share had grown 304% in that year and that the outlook for 1994 was positive. A.G. Edwards further contended that Valdes made a rational recommendation based on then available information regarding the earnings and market performance of Media Logic stock, which was reasonable in light of Claimant's investment objectives. A.G. Edwards maintained that as of July 7, 1993, the date Claimant transferred his stock to Josephthal, A.G. Edwards

had no ability to know the status of Claimant's position and no responsibility to communicate with him. A.G. Edwards further maintained that Claimant's action of purchasing 750 more shares of Media Logic, after it had already declined by 1/3, demonstrated his understanding of both the upside and downside of risk fluctuation, and further that any loss incurred due to the purchase of stock at Josephthal could not be held against A.G. Edwards. As a result of the above, Respondent A.G. Edwards maintained that it should not be held liable.

Respondent, Josephthal Lyon & Ross, Inc., through its representative and in-house counsel, Robert E. Murphy, Esq., maintained that the Claimants invested in two securities over the period of the Josephthal account and made no complaint to Josephthal prior to filing the subject action almost two years after the purchase in question. Josephthal further maintained that the Claimants had prior experience in the subject security when the account conducted the July 14, 1993 settlement date purchase of Media Logic and accordingly concluded that Claimants were knowledgeable about and comfortable with their purchase.

Josephthal contended that the Claimants promptly submitted full payment for said purchase. Josephthal further contended that subsequent to the 100% liquidation of their Media Logic position on December 3, 1993, Claimants purchased 3,000 shares of STET - ORD, submitting full payment without a timely complaint regarding problems with their account. Respondent Josephthal contended that this claim was manufactured after the fact upon a subsequent March 22, 1995 sale to a loss of Claimants' 3,000 shares of STET-ORD. As a result of the above, Respondent Josephthal maintained that it should not be held liable.

Respondent, John Valdes, who appeared Pro Se, reiterated much of what was stated in both of the other Respondents' Answers. Respondent Valdes maintained that after he left Josephthal it was brought to his attention, via the Boston Herald's September 24, 1993 issue, that there was a class action suit against Media Logic for release of misleading information that pumped up the stock value, and that he had presented the facts to the best of his ability. Respondent Valdes further maintained that the purchase of Media Logic was not unauthorized or unsuitable, and that Claimants were aware at the outset of the risk of profits and losses associated with stock trading and voluntarily assumed such risks. As a result of the above, Respondent Valdes, maintained that he should not be held liable.

In Claimants' responses to Respondents' Answers, Claimants reiterated much of their initial claim and contended that the account at A.G. Edwards should have been in the names of both Joseph J. and Helen A. Terry, and that it was a mistake on the part of Valdes that it was not. Claimant Joseph J. Terry further contended that while he has been in the market for many years, his experience is with mutual funds and that Valdes saw that he was a man 76 years of age and saw an opportunity to take advantage of him. Claimants alleged that Valdes made false projections to push a stock that he owned and that he was receiving a commission on. Claimant, Joseph J. Terry, further alleged that he did not file a complaint with Josephthal because he did not know the procedure, but he did mention his displeasure to Steve Conrad who took over the account for Valdes. Claimant, Joseph J. Terry, contended that he did not manufacture the claim after a loss on the other stock, STET-ORD, and that the reason for the claim was the substantial loss he sustained due to Valdes' mishandling and misinformation and persistence in pursuing Claimant as a client due to his age and susceptibility to Valdes' pushing of Media Logic.

RELIEF REQUESTED

Claimants, Joseph J. and Helen A. Terry JTWROS, requested \$10,000.00 in actual damages.

Respondents, A.G. Edwards & Sons, Inc., Josephthal Lyon & Ross, Inc. and John Valdes, requested that the claims of the Claimants be dismissed in their entirety.

AWARD

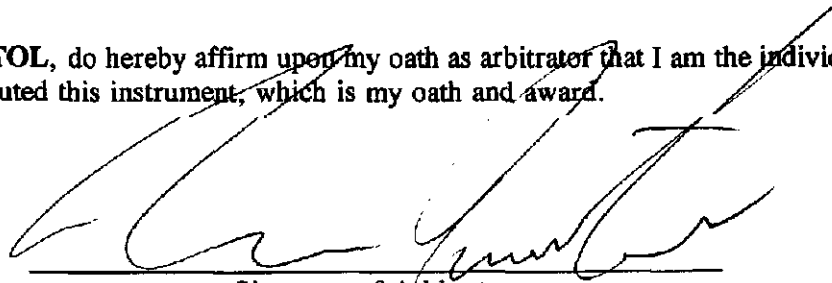
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Norman Bristol, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants, Joseph J. and Helen A. Terry, on March 14, 1995 and by the Respondent A.G. Edwards & Sons, Inc., on June 13, 1995 and by Respondent, Josephthal Lyon & Ross, Inc., on May 30, 1995, and by Respondent, John Valdes, on July 10, 1995.

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. The claims of the Claimants, Joseph J. and Helen A. Terry JTWROS, against Respondents, A.G. Edwards & Sons, Inc., Josephthal Lyon & Ross, Inc. and John Valdes, are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants, Joseph J. and Helen A. Terry JTWROS, shall be retained by the NASD, Inc.

AFFIRMATION

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

A handwritten signature in dark ink, appearing to read 'Norman Bristol', is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: December 6, 1995