

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

David L. Daley & Lakeside Title Agency

95-01593

Name of Respondents

A.G. Edwards & Sons, Inc.
Gary Pepple

REPRESENTATION

For claimants David L. Daley ("Daley") and Lakeside Title Agency ("Lakeside") appeared George L. McGaughey, Esq., of the law firm of McDonald, Hopkins, Burke & Haber Co., L.P.A. located in Cleveland, Ohio.

For respondents A.G. Edwards & Sons, Inc. ("A.G. Edwards") and Gary Pepple ("Pepple") appeared William S. Port, Esq., Litigation Counsel of A.G. Edwards & Sons, Inc.

CASE INFORMATION

Statement of Claim filed: March 28, 1995.

Claimant Daley's Submission Agreement signed on: March 13, 1995.

Claimant Lakeside's Submission Agreement signed on: March 17, 1995.

Respondent A.G. Edwards' Submission Agreements signed on: July 6, 1995.

Respondent Pepple's Submission Agreements signed on: July 6, 1995.

Joint Statement of Answer filed by respondents A.G. Edwards and Pepple on: June 16, 1995.

HEARING INFORMATION

Hearing Date/Sessions:

February 1, 1996

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Three Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in Cleveland, Ohio.

CASE SUMMARY

Claimants alleged that, from December, 1991, they maintained an account with A.G. Edwards under the name Lakeside and that Pepple served as the account representative. Claimants further alleged that, pursuant to an agreement between Daley and the president of Lakeside, Daley deposited money and assets into the Lakeside account and the assets were maintained in trust by Lakeside for the benefit of Daley.

Daley alleged that he agreed to allow Pepple to manage his investments based upon Pepple's promise that his investments would earn approximately twenty percent and that any securities which declined in value of seven percent would be sold to prevent any loss of more than seven percent on a given security. Claimant further alleged that he transferred approximately \$308,000.00 into the account in January and February, 1992.

Daley alleged that in March, 1992 he told Pepple that he needed approximately \$132,000.00 out of the account for his business and that Pepple told him that he should borrow the money against the account. Claimants further alleged that the value of the portfolio declined swiftly and dramatically as a result of Pepple's unsuitable investments in volatile and risky securities. Claimants also alleged that, contrary to Pepple's promises, he did not sell the securities when they declined seven percent in value, but instead he sold off various securities to meet margin calls on the loan. Allegedly, by March, 1993, all of the securities in the account were sold off to pay off the remaining loan balance and Daley was left with only \$25,500.00 in the account.

Claimants maintained that respondents breached their fiduciary duty by failing to manage the account as promised and that respondents' actions also violated the Rules of Fair Practice of the NASD. Claimants further maintained that A.G. Edwards was jointly and severally liable with Pepple under the doctrine of respondeat superior. Claimants alleged that, as a result of respondents' breach of fiduciary duty, breach of their contractual promises and representations and their failure to use due care in advising claimants and managing the account, the respondents proximately caused claimants damages of approximately \$145,000.00, plus interest which should have been earned on the account.

Respondents alleged that Pepple was an advocate of a stock trading strategy originated by William O'Neal and that Daley agreed that this strategy would be appropriate for his portfolio. Respondents further alleged that, shortly after Daley established his portfolio, he determined that he needed \$100,000.00 out of the account. Respondents maintained that Pepple suggested that Daley consider selling some of the stock which was not performing well, but that Daley chose to borrow money against the investments through the use of margin.

Respondents maintained that, when a number of stocks in Daley's portfolio began to decline in value, Daley refused to follow O'Neal's strategy and Pepple's recommendation to sell the stock. In addition, respondents maintained that, as the market continued to deteriorate, Daley borrowed an additional \$30,000.00 against the assets in the account. Respondents further maintained that they cannot be held liable for the decisions Daley made, which were in direct contravention to

the recommendations made by respondents.

As affirmative defenses, respondents maintained that the Statement of Claim failed to state a claim upon which relief could be granted; that the claims were barred under the doctrines of ratification, estoppel, waiver and laches; that claimants failed to mitigate damages; that claimants caused or contributed to the alleged damages; that claimants voluntarily assumed the risks associated with investing in securities; that the alleged damages were caused by market conditions for which respondents were not responsible; and that the claim was barred by the statute of limitations.

RELIEF REQUESTED

Claimants requested that an award be issued in their favor against respondents Pepple and A.G. Edwards jointly and severally in the amount of \$177,000.00, computed as follows:

1. \$145,000.00 in damages for loss principal sustained through breach of contract, breach of fiduciary duty, breach of suitability requirements, negligence and failure to adequately and diligently manner and supervise claimant's account; and
2. \$22,000.00 in damages for interest which should have been earned, computed at 9% per annum, on the amount of money which should have still been in the Lakeside account in March, 1993; and
3. \$10,000.00 in damages for attorney fees and costs; and
4. All other interest, costs, expenses and other relief which the arbitrators deem appropriate.

Respondents requested that the matter be dismissed in its entirety, that they be awarded costs including attorney's fees, and that they be awarded such further relief as the arbitrators believe just and proper.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing and pursuant to the stipulation of all parties, claimant Lakeside was dismissed as a party to this matter.

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 a conformed copy of the Award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents A.G. Edwards and Pepple be and hereby are jointly and severally liable and shall pay to claimant Daley the sum of \$20,000.00, specifically excluding interest.
2. Claimant's request for punitive damages is hereby denied.
3. Claimant's request for attorneys' fees is hereby denied.
4. Each party shall bear their respective costs.
5. All other claims are hereby denied.

FORUM FEES

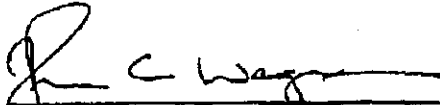
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$200.00 filing fee previously submitted by the claimants and have assessed the following forum fees:

3 sessions x \$750.00 = \$2,250.00 minus hearing session deposit of \$750.00 = \$1,550.00

1. Claimant Daley be and hereby is liable for and shall pay to the NASD the sum of \$775.00, representing one-half of the outstanding forum fees.
2. Respondents A.G. Edwards and Pepple be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$775.00, representing one-half of the outstanding forum fees.

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

ARBITRATORS' SIGNATURES

A handwritten signature in dark ink, appearing to read 'Thomas C. Wagner', written over a horizontal line.

Thomas C. Wagner, Esq.
Public Chairperson

Robert C. Bianchi, Esq.
Public Arbitrator

David A. Rodriguez
Industry Arbitrator

Date of Decision: April 8, 1996

ARBITRATORS' SIGNATURES

Thomas C. Wagner, Esq.
Public Chairperson



Robert C. Bianchi, Esq.
Public Arbitrator

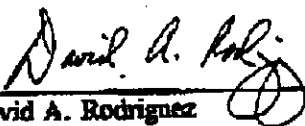
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