

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Philemon J. and Cecelia E. Marcoux

95-05737

Name of Respondents

A.G. Edwards & Sons, Inc.
John McLendon

REPRESENTATION

For claimants Philemon J. and Cecelia E. Marcoux ("claimants") appeared Peter Marcoux.

For respondents A.G. Edwards & Sons, Inc. ("Edwards") and John McLendon ("McLendon") appeared in-house counsel, Hope Johnson, Esq.

CASE INFORMATION

Statement of Claim filed: December 6, 1995.

Claimants' Submission Agreement signed on: January 3, 1996.

Statement of Answer filed jointly by Respondents on: May 13, 1996.

Respondent Edwards' Submission Agreement signed on: May 6, 1996.

Respondent McLendon's Submission Agreement signed on: May 10, 1996.

Claimants' Motion to Amend filed on: October 14, 1996.

Respondents' Response to claimants' Motion to Amend filed on: November 8, 1996.

HEARING INFORMATION

Telephonic Pre-Hearing Conference:	November 4, 1996	one session
Hearing Dates/Sessions:	December 5, 1996	three sessions

The hearings were conducted under the auspices of the National Association of Securities Dealers Regulation, Inc. at the Hampton Inn located at 3398 Piedmont Road, N.E., Atlanta, Georgia.

CASE SUMMARY

Claimants alleged that respondents sold their shares of Healthsouth without authorization. Claimants further alleged that during a four year period they earned \$5,000.00 from their account while respondents earned commissions of \$13,000.00 maintaining that respondents' objective was to generate commissions.

Claimants contended that they are retired citizens living on fixed incomes generated from military and private sector pensions. Claimants further contended that their typical investments were highly conservative and income bearing including securities such as Atlantic Energy Inc., Guaranteed Mortgage, Ryan Mtg. Acceptance Corp and UTS Insured Muni Income. Claimants also contended that in 1990 they moved from New Jersey to Alabaster Alabama and began investing with McLendon. Claimants asserted that from the outset, many of their conservative investments were sold and riskier equities were purchased including Bruno's Inc., Foxmeyer, Healthsouth, Boeing, and Compression. Claimants further asserted that multiple purchases and sales were conducted many without consent of either of the claimants despite instructions to the contrary and that the account was not properly supervised.

Claimants alleged that McLendon convinced them to purchase shares of Healthsouth stating that it would go to \$30.00 per share and then inexplicably and without authorization sold it at \$18.00 per share. Claimants further alleged that shortly thereafter the company merged with another company and the shares went to over \$40.00 per share.

Respondents asserted that claimants maintained a joint account at Edwards between May 1990 and October 1994 in which claimants had approximately \$34,000.00 invested. Respondents further maintained that claimants experienced overall principal gains and generated substantial dividends, for a significant positive total return in claimants' account. Respondents also maintained that the gains are due to McLendon's efforts. Respondents contended that claimants' primary complaint is not about the account but about their investment in Healthsouth. Respondents further contended that respondents could not have possibly known that Healthsouth would acquire a portion of National Medical and subsequently increase in value. Respondents also contended that claimants authorized the sale of Healthsouth to avoid losses because the stock had fallen in value for several months after their purchase and was sold after trading higher than their purchase price.

Respondents asserted that McLendon was in constant contact with claimants and that all trades were authorized. Respondents further asserted that no trades were recommended for the sole purpose of generating a commission and that McLendon maintained a positive and professional working relationship with claimants. Respondents maintained that McLendon used his best efforts to make recommendations to claimants which were consistent with their investment objectives, financial condition and investment experience. Respondents also maintained that as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimants Philemon and Cecelia Marcoux requested that the respondents return to them the commissions paid and \$20,000.00 for the sale of Healthsouth. Claimants also requested interest and unspecified punitive damages.

Respondents A.G. Edwards, Inc. and John McLendon requested that the claims be dismissed in their entirety together with an award of attorneys' fees and expenses.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain 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. The respondents A.G. Edwards & Sons, Inc. and John McLendon are jointly and severally liable and shall pay to the claimants Philemon and Cecelia Marcoux \$12,431.00 in actual damages.
2. The respondents A.G. Edwards & Sons, Inc. and John McLendon are jointly and severally liable and shall pay to the claimants Philemon and Cecelia Marcoux \$1,346.00 in pre-judgment interest from the period of October 3, 1994 to December 5, 1996.
3. The parties shall bear their respective attorneys' fees and costs.
4. All other relief requests are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation Inc. shall retain the \$150.00 non-refundable filing fee previously deposited by claimants and have assessed the following forum fees:

3 sessions x \$500.00	= \$1,500.00
Minus claimants' \$500.00 deposit	= <u>\$ 500.00</u>
Total outstanding	= \$1,000.00

Respondents A.G. Edwards & Sons, Inc. and John McLendon be and hereby are jointly and severally liable for the sum of \$1,500.00 representing the total amount of forum fees assessed. Therefore, respondents A.G. Edwards & Sons, Inc. and John McLendon shall pay to the claimants Philemon and Cecelia Marcoux \$500.00 as reimbursement of the hearing session deposit. In addition, respondents A.G. Edwards & Sons, Inc. and John McLendon shall pay to NASD Regulation, Inc. \$1,000.00 for the outstanding forum fees.

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

ARBITRATORS' SIGNATURES

I, Harriet H. Harris, Esq., do hereby swear or affirm that I am the individual described herein, and who executed this instrument which is my oath and award.

Harriet H. Harris

Harriet H. Harris
Public Chairperson

I, George Loughery, do hereby swear or affirm that I am the individual described herein, and who executed this instrument which is my oath and award.

George Loughery
Public Panelist

I, Landrum H. Henderson, Jr., do hereby swear or affirm that I am the individual described herein, and who executed this instrument which is my oath and award.

Landrum H. Henderson, Jr.
Industry Panelist


Date of Decision: February 24, 1997

ARBITRATORS' SIGNATURES

I, Harriet H. Harris, Esq., do hereby swear or affirm that I am the individual described herein, and who executed this instrument which is my oath and award.

Harriet H. Harris
Public Chairperson

I, George Loughery, do hereby swear or affirm that I am the individual described herein, and who executed this instrument which is my oath and award.


George Loughery
Public Panelist

I, Landrum H. Henderson, Jr., do hereby swear or affirm that I am the individual described herein, and who executed this instrument which is my oath and award.

Landrum H. Henderson, Jr.
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ARBITRATORS' SIGNATURES

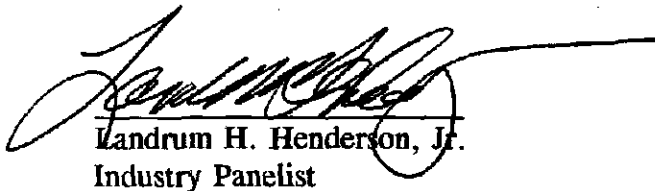
I, Harriet H. Harris, Esq., do hereby swear or affirm that I am the individual described herein, and who executed this instrument which is my oath and award.

Harriet H. Harris
Public Chairperson

I, George Loughery, do hereby swear or affirm that I am the individual described herein, and who executed this instrument which is my oath and award.

George Loughery
Public Panelist

I, Landrum H. Henderson, Jr., do hereby swear or affirm that I am the individual described herein, and who executed this instrument which is my oath and award.



Landrum H. Henderson, Jr.
Industry Panelist

Date of Decision: February 24, 1997