

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Myron J. Coplan,

Claimant,

v.

No. 96-00717

A.G. Edwards & Sons, Inc., and
Robert M. Derks,

Respondents.

REPRESENTATION OF PARTIES

Claimant Myron J. Coplan ("Claimant") was represented by Dale J. Coplan, Esq. of Burg & Eldredge, P.C. located in Denver, Colorado.

Respondents A.G. Edwards & Sons, Inc. ("AGE") and Robert M. Derks ("Derks") (collectively referred to as "Respondents") were represented by Clay L. Grumke, Esq. of A.G. Edwards & Sons, Inc. located in St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about February 16, 1996.

Claimant's Submission Agreement was signed on February 7, 1996.

Respondents' Joint Statement of Answer was filed on or about April 17, 1996.

Respondent AGE's Submission Agreement was signed on April 15, 1997 by Stephen G. Sneeringer, Vice President and Counsel of A.G. Edwards & Sons, Inc.

Respondent Derks' Submission Agreement was signed on April 1, 1996.

HEARING INFORMATION

The telephonic pre-hearing conferences were held on August 5, 1996 for one (1) session, August 21, 1996 for one (1) session, September 30, 1996 for one (1) session, and April 24, 1997 for one (1) session.

The hearing was held on May 6, 1997 for two (2) sessions, May 7, 1997 for two (2) sessions, May 8, 1997 for two (2) sessions, and May 9, 1997 for two (2) sessions.

The hearing location was Milwaukee, Wisconsin.

CASE SUMMARY

Claimant represented that on or about September 10, 1990, Claimant deposited \$416,685.56 with Respondent AGE under the supervision of Respondent Derks who was Claimant's account executive. Claimant alleged that Respondent Derks embarked on an investment program almost entirely based on short selling, without any hedging protection whatsoever, and which was unsuitable and inappropriate for Claimant's personal and financial circumstances. Claimant maintained that with respect to his financial and personal circumstances, specifically: Claimant was 66 years of age and retired; that the funds in the AGE account represented 100% of his net worth, other than the family home; that the source of the funds was the sale of real property that had been used in the recently failed Coplan appliance business; that Claimant was involved in litigation, arising from the failed appliance business; and that Claimant was recently hospitalized for depression and was still suffering from depression. Claimant contended that, within five months of the first trade with Respondents, Claimant had lost more than 25% of his original position or \$107,594.89. Claimant asserted that his well being and state of mind were severely depressed because of the impact of losses in such magnitude. Claimant alleged that Respondent AGE was negligent in supervising Respondent Derks and allowing Respondent Derks to employ the short selling investment strategy in circumstances such as Claimant's.

Respondents denied all liability to Claimant in the Joint Statement of Answer. Respondents alleged that Claimant opened his account with the primary investment objective of "growth," an approximate net worth of \$700,000, twenty-five years of investment experience in investing in stocks and bonds and two years of experience in investing in commodities. Respondents alleged that, at all times, Respondents appropriately handled Claimant's accounts with AGE. Respondents asserted that Claimant maintained control of the accounts, received suitable recommendations of securities for Claimant's stated investment objectives, financial situation, and financial experience. Respondents contended that Respondents did not conduct unauthorized trades nor unauthorized trading on margin in Claimant's account. Respondents also denied that Respondents engaged in excessive trading in Claimant's account. Respondents maintained that Respondent Derks received appropriate supervision in the handling of Claimant's account, where such supervision was required.

RELIEF REQUESTED

Claimant requested a judgement against Respondents, jointly and severally, in an amount to be proven at the hearing, plus costs, expert witness fees, interest at the legal rate, moratory interest, reasonable attorney fees, exemplary damages and such other and further relief as the panel deems just and proper, but not less than the actual damages from trading losses plus damages for sever emotional distress and exemplary damages, the total of which does not exceed \$500,000.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) That the Statement of Claim is hereby dismissed in its entirety with prejudice;
- (2) That other than forum fees which are specified below, the parties shall each bear their own costs, expenses, and attorneys' fees incurred in this matter; and
- (3) That all other claims and requests for relief not specifically awarded here are, and each of them, hereby dismissed in their entirety with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were eight (8) hearing sessions x \$750 = \$6,000 in forum fees. There were four (4) pre-hearing conferences x \$300 = \$1,200 in forum fees. Total forum fees = \$7,200. 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, Claimant is liable for and shall pay all forum fees incurred in this matter which is the amount of \$7,200. Further, the postponement fee, previously waived at the request of the Claimant, is hereby reinstated and this fee shall be paid by the Claimant. Accordingly, pursuant to §10332(c) of the Code, Claimant is liable for and shall pay the postponement fee in the amount of \$750.

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

Concurring Arbitrators' Signatures:

\s\ Michael B. Laikin, Esq.

Michael B. Laikin, Esq.

Chairperson

Public Arbitrator

May 19, 1997

Dated:

\s\ Stanley H. Michaelstetter, II, Esq.

Stanley H. Michaelstetter, II, Esq.

Panelist

Public Arbitrator

May 20, 1997

Dated:

\s\ Amy J. Wenzler

Amy J. Wenzler

Panelist

Industry Arbitrator

May 14, 1997

Dated:

For NASD Regulation use only:

Date award served on the parties: May 20, 1997