

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Grady Cooksey, Sr.

96-01758

Name of Respondents

A.G. Edwards & Sons, Inc.  
C. Robert Ball

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**REPRESENTATION**

For Claimant: Stephen Murphy, Esq. of the law firm of Pino & Dicks, Longwood, FL.

For Respondents: Jeff Jamieson, Esq., Associate Vice President & Counsel, A.G. Edwards & Sons, Inc. ("Edwards").

**CASE INFORMATION**

Statement of Claim filed: April 23, 1996.

Claimant's Submission Agreement signed on: January 31, 1996.

Joint Statement of Answer filed by Respondents on: June 20, 1996.

Respondent C. Robert Ball's ("Ball") Submission Agreement signed on: May 17, 1996.

Respondent Edwards' Submission Agreement signed on: June 19, 1996.

**HEARING INFORMATION**

Four hearing sessions were conducted in this matter on May 20 and 21, 1997 in Tampa, FL.

**CASE SUMMARY**

Claimant alleged that Respondents recklessly caused severe damages to him by purchasing in his SEP IRA account shares of WRT Energy Corporation only a few months prior to the company filing for bankruptcy protection and Respondents omitted to tell Mr. Cooksey that WRT Energy

Corporation was suffering large losses and was on the threshold of bankruptcy. Claimants next alleged Respondents failed to follow Mr. Cooksey's instructions to sell shares of RJR Preferred A stock at the time he requested and, instead, Respondents sold the stock the day after Mr. Cooksey submitted his order. Claimant further alleged Respondents sold to him shares of Las Vegas Entertainment, Inc. and misrepresented to him that Las Vegas Entertainment, Inc. was a division of Circus-Circus, Inc. Claimant next alleged that Respondents did not execute a sell order which Mr. Cooksey had requested from Robert Ball on shares of T2 Medical, Inc.

In addition, Claimant alleged Respondents aggressively marketed shares of K-Mart stock to Mr. Cooksey and beginning in September of 1993, Respondents told Mr. Cooksey that K-Mart was a stock which Edwards' research department followed very closely and highly recommended. Claimant maintained that by the spring of 1994, K-Mart stock had significantly declined in value and Edwards' research department then changed its position on K-Mart from a "buy conservative" to a "sell aggressive." Claimant alleged that at the same time that Edwards' research department changed its position on K-Mart and issued a sell recommendation, Respondents continued to purchase the stock for Mr. Cooksey's account and omitted to inform Mr. Cooksey that Edwards had changed its recommendation on K-Mart. Claimant alleged that Respondents purchased 25,000 shares of K-Mart stock in Mr. Cooksey's account and, as a result, Mr. Cooksey's account was over-concentrated in the K-Mart stock.

Claimant maintained that the conduct of the Respondents violated Florida securities law and was a breach of the fiduciary duty they owed to him and, as a result of these violations and breach of fiduciary duty, Mr. Cooksey suffered damages equal to \$390,000.00

Respondents denied all allegations of wrongdoing and alleged that Claimant was barred from recovering from Respondents under Claimant's Customer Agreement with Edwards and under Section 8-319 of the Uniform Commercial Code as enacted in the State of Florida. Respondents asserted other affirmative defenses of ratification; waiver; laches; failure to mitigate damages; contributory negligence; assumption of the risks; that damages were caused, if at all, by unforeseeable market factors and conditions for which Respondents are not liable; and failure to state a claim. Respondents further alleged that all counts of the Statement of Claim were barred by the applicable statutes of limitations.

### **RELIEF REQUESTED**

Claimant requested damages in the sum of \$390,000.00; pre-award and post-award interest from the date of the original investment, calculated at the maximum rate allowed by law; cost of arbitration, including all fees, expenses of expert witness, and other costs deemed fair and reasonable; attorneys' fees pursuant to Chapter 517.211(b), Florida Statutes, and the inherent power of the arbitrators to fully compensate Claimant by a "make-whole award;" and, such other relief as the arbitrators deemed appropriate under the circumstances.

Respondents requested that judgment be entered on behalf of Respondents and against Claimant on the claims of Claimant in this arbitration proceeding; that all costs of the arbitration proceeding, including, but not limited to, forum fees and Respondents' reasonable costs and expenses incurred in defending this matter, be taxed against Claimant; and, for such further relief as the arbitration panel deemed appropriate.

### 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 the NASD.

### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

All claims by the Claimant against the Respondents be and hereby are dismissed in all respects.

Each party shall bear their respective costs including attorneys' fees.

### FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, forum fees in the sum of \$3,000.00 (\$750.00 x four sessions) are assessed as follows:

The Claimant is assessed the sum of \$3,000.00 less the \$750.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. in the sum of \$2250.00.

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

Concurring Arbitrators' Signatures  
Name

Public/Industry

/S/

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James R. Kennedy, Jr., Esq.

Public

/S/

\_\_\_\_\_  
Dale W. Hagen, Esq.

Public

/S/

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Joseph H. McIntyre, Jr.

Industry

Date of Decision: 7/7/97