

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gerald R. Lishka

96-02350

Name of Respondents

A.G. Edwards & Sons, Inc.
Vicci Delores Havens

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 3, 1996, Claimant Gerald R. Lishka ("Claimant") who appeared Pro Se, alleged that he opened an Individual Retirement Account in 1989, through Respondent Vicci Delores Havens ("Havens") was with Prudential Securities. Claimant further alleged that in January, 1991 Havens left Prudential and became employed by Bateman Eichler Hill Richards, Inc., a division of Kemper Securities, Inc. Claimant also alleged that in February 1992, Havens left Bateman Eichler Hill Richards, Inc. and became employed by Respondent A.G. Edwards & Sons, Inc. ("A.G. Edwards") and that his account was transferred to A.G. Edwards. Claimant contended that over the years, Havens purchased investments for his account which were unsuitable and inconsistent with the conservative, long-term, retirement funding goals he had previously communicated.

Claimant further contended that Havens misrepresented investments such as Cel Sci Corp., Automated Security Holding, TVI Corp, Alliance Gaming Corp, Biocontrol Technology Inc. and Dimpies, which were purchased from April 1992 to March 1996. Claimant also contended that Havens failed to disclose that the investments were speculative and carried significant risk. Claimant also contended that Havens failed to monitor his investments and ignored his suggestions to sell stocks which were not performing. Claimant also contended that A.G. Edwards falsified information on the New Account Card to incorrectly reflect his investment experience, net worth and investment objectives. Claimant further contended that A.G. Edwards failed in its supervision of Havens thereby severely compromising his investments and resulting in lost profits. Claimant further contended that A.G. Edwards was non-responsive to his concerns after the departure of Havens.

Respondent A.G. Edwards & Sons, Inc., through its representative and in-house counsel, Hope Johnson, Esq., maintained that Claimant has interwined facts and allegations which are

irrelevant to this action. Respondent further maintained that it is not liable for investments which were made while Claimant was a customer of Prudential Bache. Respondent also maintained that Respondent Havens was in its employ between February 1992 and March 1996. Respondent contended that Respondent Havens recommended growth stocks which were consistent with the information provided by Claimant on the New Account Card. Respondent further contended that the Claimant's New Account Card listed the sole investment objective as growth. Respondent also contended that Claimant received written statements which reflected all the activity in his account. Respondent further contended that Claimant is barred from recovery since he authorized all transactions. Respondent further maintained that Claimant's failure to timely object to the transactions is deemed to be a ratification, waiver and estoppel of the right to recovery. Respondent also maintained that by failing to exercise due care over his investments, Claimant caused or contributed to the alleged damages. Respondent maintained that Claimant's alleged damages were caused by unforeseeable market factors and conditions affecting the value of securities. Respondent further maintained that all claims in this arbitration are time-barred and should be dismissed in their entirety.

Respondent Vicci Delores Havens failed to file a Statement of Answer.

RELIEF REQUESTED

Claimant Gerald R. Lishka requested total damages of \$10,000.00, plus interest and costs. Claimant further requests that he be permitted to keep stocks for which damages are not awarded.

Respondent A.G. Edwards requested that all claims in this arbitration be dismissed in their entirety and that it be awarded costs.

Respondent Vicci Delores Havens failed to file a Statement of Answer.

OTHER ISSUES CONSIDERED AND DECIDED

The Claimant requested that Respondent Vicci Delores Havens be barred from presenting any defenses since she failed to respond to the Statement of Claim and failed to request an extension. This Respondent never filed a Statement of Answer; therefore, the Arbitrator did not rule on this motion.

Pursuant to Section 10302 of the NASD Code of Arbitration Procedure, the Respondent Vicci Delores Havens was sent the Statement of Claim via regular mail and was given an opportunity to respond which he failed to do. In addition, an overdue answer notice and notice of the identity of the arbitrator were sent via certified mail on August 1, 1996 and the signed return receipt card is on file with the NASD.

Pursuant to the by-laws of the NASD, the arbitrator determined that Respondent Vicci Delores Havens had notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator Alan R. Markizon, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 21, 1996, and by Respondent A.G. Edwards & Sons, Inc. on June 12, 1996.

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 Respondents A.G. Edwards & Sons, Inc. and Vicci Delores Havens are jointly and severally liable and shall pay to the Claimant Gerald R. Lishka \$8,089.23 in actual damages.
2. Respondents A.G. Edwards & Sons, Inc. and Vicci Delores Havens are jointly and severally liable and shall pay to the Claimant Gerald R. Lishka interest at the rate of 7% per annum from November 1, 1994, to the date of payment of the award.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondents A.G. Edwards & Sons, Inc. and Vicci Delores Havens are jointly and severally liable and shall pay to the Claimant \$150.00 as reimbursement of the filing fee.
5. All other relief requests are denied.

AFFIRMATION

I, **ALAN R. MARKIZON, ESQ.**, 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.


Signature of Arbitrator

DATE OF DECISION: October 8, 1996