

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Gerald R. and Bernice Lishka

96-02351

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, claimants Gerald R. and Bernice Lishka ("claimants"), who appeared Pro Se, alleged that respondent A.G. Edwards & Sons, Inc. ("AGES") through its representative, respondent Vicci Delores Havens ("Havens"), failed to properly maintain their AGES joint account. Claimants further alleged that in 1989, they were novice investors and opened an their account at Prudential Securities with Havens. Claimant further alleged that the account was ultimately moved it to AGES when Havens became employed there. Claimants also alleged that over the years, Havens purchased investments for the account which were unsuitable and inconsistent with the conservative, long-term, retirement funding goals they had previously expressed.

Claimants contended that Havens breached the duty owed to them with respect to their investments in Emerald Homes, LP, Appoint Technologies, Xoma, Circon and Dimples. Claimants further contended that Havens failed to disclose that the investments were speculative and carried significant risk. Claimants also contended that Havens failed to monitor the investments and ignored suggestions to sell stock which were not performing. Claimants asserted that AGES failed in its supervision of their account thereby severely compromising the investments and resulting in lost profits. Claimants further asserted that AGES was non-responsive to their concerns after Havens departed AGES.

Respondent A.G. Edwards & Sons, Inc. through its representative and in-house counsel, Hope Johnson, Esq., maintained that claimants have intertwined facts and allegations which are wholly irrelevant to this action. Respondent further maintained that it is not liable for investments which were made while claimants were customers of Prudential. Respondent also maintained

that respondents Havens was its employee from February 1992 to March 1996. Respondent contended that Havens made recommendations which she believed were consistent with claimants desire for growth. Respondent further contended that claimants received account statements reflecting all activity in the account. Respondent also contended that claimants are barred from recovery since all transactions were authorized. Respondent asserted that claimants' failure to timely object to the transactions is deemed to be a ratification, waiver and estoppel of the right to recovery. Respondent further asserted that by failing to exercise due care over the investments, claimants caused or contributed to the alleged damages. Respondent maintained that claimants' alleged damages were caused by unforeseeable market factors and conditions affecting the value of the 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 to the Statement of Claim.

RELIEF REQUESTED

Claimants Gerald and Bernice Lishka requested \$10,000.00 in actual damages plus interest, costs and filing fees.

Respondent A.G. Edwards & Sons, Inc. requested that the claims be dismissed in their entirety plus reimbursement for costs and expenses.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrator considered and reviewed all documentation submitted by the parties concerning claimants' motion to strike respondent A.G. Edwards & Sons, Inc.'s October 17, 1996 documentary submission as it was filed late. The arbitrator denied the motion.

Pursuant to Section 10302 of the NASD Code of Arbitration Procedure, respondent Vicci Delores Havens was sent the Statement of Claim via regular mail and was given an opportunity to respond which she failed to do. In addition, an overdue answer notice and notice of the identity of the arbitrator were sent via certified mail 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, Philip W. Burge, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimants on May 21, 1996, and by respondent A.G. Edwards & Sons, Inc. on June 21, 1996, but not by respondent Vicci Delores Havens as is required by Sections 10301 and 10302 of the NASD Code of Arbitration Procedure.

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. Respondents A.G. Edwards & Sons, Inc. and Vicci Delores Havens are jointly and severally liable and shall pay to the claimants Gerald R. and Bernice Lishka \$2,769.75 in actual damages.
2. Respondents A.G. Edwards & Sons, Inc. and Vicci Delores Havens are jointly and severally liable and shall pay to the claimants Gerald R. and Bernice Lishka simple interest at the rate of 7% per annum from September 23, 1995, to September 23, 1996.
3. The parties shall bear their respective costs and attorney's fees.
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 claimants Gerald R. and Bernice Lishka \$150.00 as reimbursement of the filing fee.
5. All other relief requests are denied.

AFFIRMATION

I, Philip W. Burge, 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:

January 3, 1997