

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Russell R. Kuhlman,
Gary A. Kuhlman, and
Byron R. Kuhlman,

Claimants,

and

Case No: 96-02745

A.G. Edwards & Sons, Inc., and
James Ajlouny,

Respondents.

REPRESENTATION OF PARTIES

Claimants Russell R. Kuhlman, Gary A. Kuhlman, and Byron R. Kuhlman (collectively referred to as "Claimants") were represented by Walter L. Baumgardner, Esq. of Musilli, Baumgardner, Wagner & Parnell, P.C. located in St. Clair Shores, Michigan.

Respondents A.G. Edwards & Sons, Inc. ("AGE"), and James Ajlouny ("Ajlouny") (collectively referred to as "Respondents") were represented by Hope Johnson, Esq. of A.G. Edwards & Sons, Inc. located in St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about June 25, 1996.

Claimants' Joint Submission Agreement was signed on May 20, 1996.

The Joint Statement of Answer was filed on or about September 18, 1996.

Respondent AGE's Submission Agreement was signed on August 20, 1996 by Stephen G. Sneeringer, Vice President & Counsel of A.G. Edwards & Sons, Inc.

Respondent Ajlouny's Submission Agreement was signed on September 6, 1996.

HEARING INFORMATION

The Hearing in this matter was held on May 13, 1997 for two (2) sessions in Southfield, Michigan.

CASE SUMMARY

Claimants alleged that, at the time the subject investments were made, Respondent Ajlouny was specifically told by Claimants that they wanted long term investments in which there would be minimum risk to their principal and provide them with a stream of income. Claimants contended that, due to the recommendations of Respondents, Claimants purchased 2000 shares of K-Mart preferred stock ("K-Mart PERCs"). Claimants asserted that, sometime after the investments were made, Claimants discovered that although Respondents represented that the Claimants could control the convertibility of the K-Mart PERCs, these representation were in fact false. Claimants alleged that, at the time the subject investments were made, Respondents failed to disclose the following to Claimants: that they could lose most of their investment if the underlying common stock was below the convertible price on September 15, 1994; that the recommended investments were unsuitable, in light of the investment goals disclosed to the Respondents; that there were risks involved in the investments, such as the mandatory convertibility of the K-Mart PERCs; that they would not get the promised return of 9.9% beyond September 15, 1994; that Respondent Ajlouny was inexperienced or withheld the fact the K-Mart PERCs would be mandatorily converted as of September 15, 1994; that the Claimants had no idea what the undisclosed risks were in the K-Mart-PERCs; and that there were other investment alternatives available without the risks of the convertibility of the K-Mart PERCs. Claimants made various claims, including: violations of Rule 10b-5 of the 1934 Securities Exchange Act; violations of MCLA 451.810; common law fraud; and breach of duty.

Respondents denied all liability to Claimants in the Joint Statement of Answer. Respondents alleged that, when Russell Kuhlman opened two joint accounts for his sons Gary and Byron Kuhlman, Russell Kuhlman stated that he was looking for investments with both growth and income, and was also interested in preferred stocks. Respondents contended that Respondent Ajlouny explained the nature and risks associated with all the potential investments presented to Russell Kuhlman, including the nature and risks associated with the K-Mart PERCs. Respondents asserted that Respondent Ajlouny further explained that the K-Mart PERCs would either be converted to common stock or liquidated for a sum certain by a date certain. Respondents denied that Respondent Ajlouny misrepresented any fact about the K-Mart PERC's to the Claimants. Respondents maintained that after K-Mart converted the preferred stock to common stock the value of the Claimants' investment in K-Mart has declined. Respondents alleged that a decline in value does not, however, made an investment unsuitable.

RELIEF REQUESTED

Claimants requested an award of all loss of principal suffered as a result of the investments sold to Claimants by Respondents, plus 9.9% interest from date of purchase to date on the total investment of \$94,275.07, lost income, costs, attorney fees, and exemplary damages due to the outrageous conduct of the Respondents.

Respondents requested that all claims in this arbitration be dismissed in their entirety and that all costs incurred in connection with this arbitration be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

Respondents moved to dismiss at the end of Claimants' case. This Motion was taken under advisement until the conclusion of the hearing on the merits and is granted in the final award.

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 at the hearing, 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 and expenses incurred in this matter; and
- (3) That any relief not specifically enumerated is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 per pre-hearing session, if any. There were two (2) hearing sessions x \$500 = \$1,000 in forum fees. 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, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 (1/2 total forum fees) previously deposited by the Claimants.

Respondents A.G. Edwards & Sons, Inc. and James Ajlouny are jointly liable for and shall pay forum fees in the amount of \$500 (1/2 total forum fees).

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

Concurring Arbitrators' Signatures

\s\ Marvin I. Horowitz, Esq.
Marvin I. Horowitz, Esq.
Chairperson
Public Arbitrator

May 20, 1997
Dated:

\s\ Frederick F. Fordon
Frederick F. Fordon
Panelist
Public Arbitrator

May 20, 1997
Dated:

\s\ William S. Gray, II
William S. Gray, II
Panelist
Industry Arbitrator

May 19, 1997
Dated:

For NASD Regulation use only:
Date award served on the parties: May 22, 1997