

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gordon Waite

96-03654

Name of Respondents

A.G. Edwards & Sons, Inc.
Jack L. Stapleton

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on August 23, 1996, claimant Gordon Waite ("claimant") through his representative and counsel Jeffrey P. Yashinsky, Esq., of the law firm Weinstock & Scavo, P.C. located in Atlanta, Georgia, alleged that respondents A.G. Edwards & Sons, Inc. ("A.G. Edwards") and Jack Stapleton ("Stapleton") fraudulently misled him through the use of manipulative and deceptive measures. Claimant further alleged that on or about June 1, 1995, he and Stapleton an employee of A.G. Edwards at the time entered into a written agreement regarding the management of his account. Claimant also alleged that under the agreement no one at A.G. Edwards was authorized to enter trades on his behalf without his prior approval.

Claimant asserted that on June 15, 1995, Stapleton persuaded him to purchase shares of DelGratia Mining Corporation ("DelGratia"). Claimant further asserted that Stapleton misrepresented to him that he could only purchase DelGratia in blocks of three hundred. Claimant also asserted that in addition to the 300 DelGratia, Stapleton purchased an additional 25 DelGratia without his authorization. Claimant contended that Stapleton informed him of the unauthorized purchase and added that he personally owned thousands of shares of DelGratia. Claimant further contended that Stapleton offered this information as a means for enticing inexperienced investors, and after Stapleton convinced him that it would be beneficial, he acquiesced to the additional purchase.

Claimant also contended that on November 3, 1995, he received a statement from A.G. Edwards which revealed that Stapleton had purchased an additional 980 DelGratia in his account on July 20, 1995 without his authorization. Claimant alleged that Stapleton apparently rescinded the transaction for 500 Delgratia but that a transaction for 480 DelGratia was charged to his account. Claimant alleged that he immediately called A.G. Edwards regarding the unauthorized transactions and was told that Stapleton no longer worked for them. Claimant also alleged that A.G. Edwards dismissed his complaint as untimely and refused to offer any assistance. Claimant maintained that his request for reimbursement was timely because he had received no statements from A.G. Edwards between July 5, 1995 and November 3, 1995.

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Respondents A.G. Edwards & Sons, Inc. and Jack L. Stapleton (collectively referred to as "respondents") maintained that claimant had 15 years of experience in stocks and bonds when he opened an account at A.G. Edwards. Respondents further maintained that it is ludicrous to believe that someone with 15 years of investment experience could be convinced that he could only purchase stocks of DelGratia in blocks of 300 without questioning the fact or requiring further evidence of its truthfulness. Respondents also maintained that claimant's admission that he received confirmation of the purchase of 25 additional DelGratia, refutes his claim that Stapleton misrepresented that the stock could only be purchased in blocks of 300.

Respondent Stapleton averred that he obtained claimant's authorization prior to the purchase of the additional shares on July 20, 1995. Respondents further maintained that in addition to the confirmation which was enclosed with the November 7, 1995 letter, that claimant also received his account statement for the period July 1, 1995 to July 28, 1995. Respondents further contended that claimant waited over four months before he complained about the alleged unauthorized trade. Respondents also contended that claimant ratified the trade when he failed to notify A.G. Edwards pursuant to the Client Agreement. Respondents maintained that even assuming arguendo, that the trade was unauthorized, claimant had a duty to mitigate his losses, which he failed to do.

RELIEF REQUESTED

Claimant requested \$10,000.00 in damages, plus \$5,332.50 in attorneys' fees pursuant to 15 U.S.C. 78j; punitive damages pursuant to Georgia law, O.C.G.A. 51-12-5.1; costs and interest.

Respondents requested that the claims of claimant be dismissed in their entirety, and that they be permitted to go without cost.

AWARD

Pursuant to Section 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Chandler Bridges, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimant Gordon Waite on July 17, 1996, by respondent A.G. Edwards on November 20, 1996 and by respondent Jack Stapleton November 15, 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. Respondents A.G. Edwards & Sons, Inc. and Jack Stapleton be and hereby are jointly and severally liable and shall pay to claimant Gordon Waite the sum of \$3,200.00 in compensatory damages.
2. Respondent Jack Stapleton be and hereby is liable and shall pay to claimant Gordon Waite the sum of \$1,000.00, representing punitive damages, pursuant to Georgia law, O.C.G.A. 51-12-51.1.
3. Respondents A.G. Edwards & Sons, Inc. and Jack Stapleton be and hereby are jointly and severally liable and shall pay claimant Gordon Waite the sum of \$1,500.00, representing attorney's fees pursuant to 15 U.S.C. 78j.

4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by claimant Gordon Waite shall be retained by NASD Regulation, Inc. Respondents A.G. Edwards & Sons, Inc. and Jack Stapleton be and hereby are jointly and severally liable and shall pay claimant Gordon Waite the sum of \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **Chandler Bridges, 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.



Chandler Bridges, Esq.

Date of Decision: February 13, 1997