

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Judy Canon,

Claimant,

and

No. 96-03676

**A.G. Edwards & Sons, Inc.,
and William Lee,**

Respondents.

REPRESENTATION OF PARTIES

Claimant, Judy Canon was represented by Sidney Levine, Esquire, Sole Practitioner, located in Sealy, Texas.

Respondents, A.G. Edwards & Sons, Inc. ("A.G. Edwards") and William Lee were represented by Jeff Jamieson, Esquire, of A.G. Edwards located in St. Louis, Missouri.

CASE INFORMATION

Claimant, Judy Canon's Statement of Claim was filed on or about September 12, 1996.

Claimant, Judy Canon's First Amended Statement of Claim was filed on or about September 18, 1997.

Claimant, Judy Canon's Submission Agreement was signed on June 27, 1996.

Respondents, A.G. Edwards and William Lee's Answer to the Statement of Claim was filed on or about October 29, 1996.

Respondents, A.G. Edwards and William Lee's Answer to the Amended Statement of Claim was filed on or about September 23, 1997.

Respondent, A.G. Edwards' Submission Agreement was signed by Stephen G. Sneeringer, Vice President and General Counsel, on October 29, 1996.

Respondent, William Lee's Submission Agreement was signed on October 15, 1996.

HEARING INFORMATION

A pre-hearing conference was held on June 16, 1997 for one (1) pre-hearing session.

The hearing was held on November 13, 1997 for three (3) hearing sessions.

The hearing was held in Houston, Texas.

CASE SUMMARY

Judy Canon ("Claimant,") alleged that the improper actions of A.G. Edwards & Sons, Inc. and William Lee ("Respondents,") caused the loss of Exxon stock by scheming with her husband at the time, Olin Buz Canon ("Buz Canon,") to place the Exxon stock in a vulnerable account when she intended to only invest conservatively. Claimant asserted that because she inherited the Exxon stock from her father and uncle, it was the separate property of Claimant and not the community property of the Canons as husband and wife. Furthermore, Claimant stated that she had intended these stocks to help fund her ten year old daughter's education as well as her own retirement. However, Claimant said that at that suggestion of her husband, Claimant went to the local A.G. Edwards office in Houston, Texas where she met with William Lee, and that Lee convinced her, in his fiduciary capacity, to withdraw the Exxon stock papers from her safety deposit box, and open an account with A.G. Edwards with the stock. Claimant maintained that both William Lee and A.G. Edwards owed her a fiduciary duty. Claimant stated that although she agreed to open the account in the name of both Judy Canon and Buz Canon as "joint tenants," no one at A.G. Edwards & Sons, Inc. nor did William Lee inform her that the account enabled either she or her husband to withdraw cash advances on the stocks. In fact, Claimant asserted that she specifically did not want to borrow any money from Respondent A.G. Edwards and that she did not wish to put up her Exxon stock as collateral for any loans. Claimant asserted that beginning within three days of opening the account, Respondent A G Edwards began making a series of loans which totaled more than \$125,000.00 using Claimant Judy Canon's Exxon stock as collateral at the request of Buz Canon and without the knowledge of Claimant. The loans were made by delivering checks from A G Edwards directly to Buz Canon, payable to Claimant Judy Canon and Buz Canon. As alleged, the Customer Agreement which was executed at the time that the account was opened, did not contain any provision that authorized loans by Buz Canon, without Claimant Judy Canon's authorization. Claimant further contended that the Joint Account Agreement, which was required prior to the opening of a joint account, was not executed until approximately six months after the joint account had actually been opened and that the Joint Account Agreement did not authorize loans to be made against Claimant Judy Canon's Exxon stock. Claimant allegedly did not receive the benefit of any funds disbursed through the loans, other than the approximately \$26,000.00 which was used as a down-payment to purchase a house. According to Claimant, A.G. Edwards was negligent in training its broker Respondent William Lee and that both Respondents were negligent and in violation of their fiduciary

duty to Claimant Judy Canon, when the Judy Canon account was opened, when money was disbursed to Buz Canon without the authority of the Claimant Judy Canon, and in connection with all other activities which were the basis of the allegations made by Claimant Judy Canon.

Respondents denied all allegations contained in the Statement of Claim. Respondents maintained that Claimant was or should have been aware of what was occurring in the joint account she maintained with her husband at A.G. Edwards. Respondent asserted that Claimant and her husband executed the appropriate documentation to open a margin account at A.G. Edwards. Respondents contended that all of the disbursements about which Claimant complained were confirmed in writing to Claimant by A.G. Edwards. Respondents pointed to the fact that disbursements from the account in question were deposited to either Claimant's husband's business account or a joint bank account maintained by Claimant and her husband. Respondent maintained that all of the funds disbursed from the Claimant's joint account at A.G. Edwards were used to benefit Claimant and/or her husband. Respondents asserted the following affirmative defenses: the claims were barred pursuant to the Claimant's Customer's Agreement with AGE and Section 8-319 of the Uniform Commercial Code; ratification, account stated, estoppel, waiver and laches; Claimant failed to act promptly and with due diligence to mitigate her damages; contributory negligence; failure to state a claim upon which relief could be granted; Claimant authorized the alleged conduct of Respondents; release; and, Statute of limitations.

RELIEF REQUESTED

Claimant, Judy Canon requested an award for: the current value of the Exxon stock which was sold by Respondent A.G. Edwards to satisfy the loans less the \$26,558.00 used for the down payment; the dividends which would have been paid on the Exxon stock after liquidation; attorney's fees; \$100,000.00 in damages for mental anguish; \$100,000.00 in punitive damages; plus costs.

Respondents, A.G. Edwards & Sons, Inc. and William Lee requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorney fees.

OTHER ISSUES CONSIDERED AND DECIDED

This matter was originally brought before Judge Johnson in the District Court of Harris County, Texas, 189th Judicial District, and in accordance with the parties' agreement, was ordered to arbitration, thereby staying the Harris County case pending final resolution of the arbitration

Claimant, Judy Canon filed a motion to join an indispensable party on or about October 29, 1996. After review and careful consideration of all related submissions, the undersigned arbitrators denied the motion.

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 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 The Statement of Claim and all amendments filed by Claimant, Judy Canon are hereby denied in their entirety and dismissed with prejudice;
2. The parties shall bear their own costs and attorneys' fees; and,
3. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied in their entirety and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300.00 and there were three (3) hearing sessions x \$750.00 = \$2,550 .00 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, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the non-refundable filing fee of \$200.00 and shall retain as forum fees the hearing session deposit of \$750.00 previously deposited with the NASD Regulation, Inc., Office of Dispute Resolution by Claimant, Judy Canon. Respondents, A.G. Edwards & Sons, Inc. and William Lee, are jointly and severally liable for the forum fees in this matter and shall pay the sum of \$1,800.00 to NASD Regulation, Inc., Office of Dispute Resolution. Respondents, A.G. Edwards & Sons, Inc. and William Lee are jointly and severally liable for and shall pay to Claimant, Judy Cannon \$750.00 as reimbursement for the hearing session deposit she previously paid to NASD Regulation, Inc. Office of Dispute Resolution.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the non-refundable member surcharge of \$350.00 previously paid to the NASD Regulation, Inc., Office of Dispute Resolution by Respondent, A.G. Edwards & Sons, Inc.

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

Concurring Arbitrators' Signatures:

Richard P. Flake, Esquire
Richard P. Flake, Esquire
Chairperson
Public Arbitrator

January 7, 1998
Date

Jeffrey M. Aboloff
Jeffrey M. Aboloff
Panelist
Industry Arbitrator

January 7, 1998
Date

Dissenting Arbitrator's Signature:

Frank M. Romano
Frank M. Romano
Panelist
Public Arbitrator

January 7, 1998
Date

For NASD use only:

Date Award was served on the parties: January 9, 1998