

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

John C. and Mary S. Tracy

96-04975

Name of Respondents

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

REPRESENTATION

For Claimants John C. and Mary S. Tracy ("Claimants") appeared Joel S. Arogeti, Esq., of the law firm Kitchens Kelley Gaynes, PC, located in Atlanta, Georgia.

For Respondent A.G. Edwards & Sons, Inc. ("AGE") appeared Hope Johnson, Esq., of the firm A.G. Edwards & Sons, Inc. located in St. Louis, Missouri.

Respondent Jack Stapleton ("Stapleton") appeared pro se.

CASE INFORMATION

Statement of Claim filed: November 06, 1996.

Claimants' Submission Agreements signed on: November 04, 1996.

Statement of Answer filed by Respondent AGE on: February 06, 1997.

Respondent AGE's Submission Agreement signed on: January 13, 1997.

Statement of Answer filed by Respondent Stapleton on: February 21, 1997.

Respondent Stapleton's Submission Agreement signed on: February 21, 1997.

HEARING INFORMATION

Pre-Hearing Conference:	August 22, 1997	-	One Session
Hearing Date(s)/Sessions:	August 27, 1997	-	Two Sessions
	August 28, 1997	-	Two Sessions

The pre-hearing conference was held telephonically. The hearings were conducted at the Holiday Inn Buckhead located in Atlanta, Georgia.

CASE SUMMARY

Claimants maintained that in 1994 they purchased stock in Arakis Energy Corp. ("Arakis"). Claimants maintained that their broker did not follow Arakis and they were referred to Respondent Stapleton. Claimants alleged that Respondent Stapleton represented to them that he and his firm, Respondent AGE, were holding large positions of Arakis both individually and on behalf of clients, and that Respondent AGE employed an analyst to follow Arakis and to provide reports to the representatives. Claimants alleged that based on this information they opened an account with Respondent AGE.

Claimants alleged that Respondent Stapleton induced them to purchase more shares of Arakis and to hold the shares they already owned based on the recommendations of the analyst. Claimants further alleged that Respondent Stapleton represented to them that he and Respondent AGE had a competitive advantage over other brokers due to the analyst. Claimants alleged that they continued to buy stock and options based on these recommendations.

Claimants alleged that on June 15, 1995, they instructed Respondent Stapleton to sell all holdings of Arakis at the market price. Claimants alleged that Respondent Stapleton sold only 3,000 shares, stating that it was not a sellers market and that Respondent AGE would have to sell the stock gradually so as not to depress the price of the stock. Claimants further alleged that after completing the purchase of all Arakis stock recommended by Respondent Stapleton, Respondent Stapleton admitted that Respondent AGE never employed an analyst.

Claimants alleged that Respondents AGE and Stapleton, are liable to them due to the fact that Respondents failed to execute trades as directed, and misrepresented statements about Arakis. Claimants further alleged that Respondents breached their fiduciary duty, and negligently handled their accounts. Claimants also alleged that Respondent AGE failed to properly supervise Respondent Stapleton.

Respondents AGE and Stapleton denied all allegations contained in the Statement of Claim. Respondent AGE maintained that at the opening of the account Claimants listed their objectives as speculation and growth, and indicated that they had ten years investment experience. Respondents maintained that the purchases in Arakis were unsolicited and that Claimants admitted following the stock before opening an account with them. Respondent AGE maintained that Respondent Stapleton did not recommend Arakis to Claimants nor did he tell them that the research department was following the stock. Respondent AGE further maintained that Respondent Stapleton did tell Claimants that Respondent AGE was a market maker in the stock in order to accommodate clients who wished to purchase it.

Respondent AGE maintained that Claimants placed an order to sell Arakis at a certain price. Respondent AGE maintained that Respondent Stapleton sold as many shares as possible at that price. Respondent AGE maintained that Claimants never complained that their shares were not sold and continued to buy and sell Arakis securities. Respondent AGE maintained that Claimants received confirmations of all transactions within 48 hours of the transactions and that no complaints were ever registered with Respondent Stapleton or Respondent AGE.

RELIEF REQUESTED

Claimants John C. and Mary S. Tracy requested damages not less than \$100,000.00 plus attorneys' fees and costs. Claimants requested punitive damages against Respondent Edwards.

Respondent Edwards requested that the claims of Claimants be dismissed in their entirety, plus attorneys'

fees, costs and expenses.

Respondent Stapleton requested that claims of Claimants be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

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.

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) Claimants' claims against Respondents A.G. Edwards and Jack Stapleton are hereby dismissed in their entirety.
- (2) All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332 of the NASD Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. will retain the \$150.00 non-refundable filing fee previously deposited by Claimant, Inc. will retain and have assessed the following Forum Fees:

1 Pre-hearing conference x \$300.00	=	\$ 300.00
4 Hearing sessions x \$500.00	=	\$2,000.00
Total Forum Fees	=	\$2,300.00

- (1) Claimants be and are hereby liable and shall pay to NASD Regulation, Inc. the sum of \$1,150.00 representing one-half of the forum fees assessed. Claimant previously deposited \$500.00 with NASD Regulation, Inc., therefore, Claimant shall pay \$650.00.
- (2) Respondents be and are hereby liable jointly and severally and shall pay to NASD Regulation, Inc. the sum of \$1,150.00 representing one-half of the forum fees assessed.
- (3) Respondent Edwards be and is hereby liable and shall pay to NASD Regulation, Inc. the sum of \$300.00, representing the Member Surcharge assessed. Respondent Edwards previously deposited \$300.00 with NASD Regulation, Inc., therefore no payment is required of Respondent Edwards.

Fees are payable to the NASD Regulation, Inc..

ARBITRATORS' SIGNATURES



Stuart Meyers, Esq.
Public Chairperson

Fred H. Vollbeer
Public Panelist

George W. Morris
Industry Panelist

Date of Decision: October 22, 1997

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