

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Otto S. Glaser.

Claimant.

and

No. 96-05467

A.G. Edwards & Sons, Inc.,

Respondent.

REPRESENTATION OF PARTIES

Claimant. Otto S. Glaser ("Glaser") was represented by Robert E. Lapin, Esquire of Carrigan, Lapin, Landa & Wilde in Houston, Texas.

Respondent. A.G. Edwards & Sons ("Edwards") was represented by Phyllis Hartrich, Esquire, at hearing, and Stephen G. Sneeringer, Esquire, in the pleadings, both of Edwards in St. Louis, Missouri.

CASE INFORMATION

Claimant Glaser's Statement of Claim was filed on or about: December 19, 1996.

Claimant Glaser's Submission Agreement was signed on: December 3, 1996.

Respondent Edwards' Statement of Answer was filed on: February 10, 1997.

Respondent Edwards' Submission Agreement was signed by Stephen G. Sneeringer, Vice President and Counsel on: February 6, 1997.

HEARING INFORMATION

The hearing was held on: October 14, 1997 for two (2) hearing sessions; and
October 15, 1997 for two (2) hearing sessions.

The hearing was held in: Houston, Texas.

CASE SUMMARY

Claimant Otto S. Glaser, ("Glaser") brought this action against Respondent A.G. Edwards & Sons, Inc., ("Edwards") for wrongful termination, age discrimination, intentional interference with business relationships, and intentional infliction of emotional distress. Specifically, Glaser asserted that Edwards terminated Glaser's employment following an incident involving a customer named Scott Mears, who, in October 1995, in an effort to avoid loss on a new issue, stopped payment on a \$1000.00 check after requesting that Glaser purchase 200 shares of Rick's Cabaret stock for him. As a result of the customer's stop payment order, the Edwards' supervisor in the Margin Department instructed Glaser to sell that 200 shares rather than to cancel the trade, thereby creating a \$205.95 debit balance. Glaser was allegedly further instructed that he would be responsible for the \$205.95 loss incurred in selling the stock, even though the customer's decision to rescind the stock purchase was untimely and notice to stop the payment order was not received from the customer's bank until eight days after the stock purchase. Nonetheless, Glaser willingly reimbursed Edwards for the trade loss, only to subsequently find out that Edwards unilaterally erased the \$205.95 debit balance from the customer's statement, thereby making it much more difficult for Glaser to collect the sum through conventional means from the customer who had deceived him, given that the customer's statement no longer reflected any debt owed to Edwards.

As alleged, Edwards told Glaser that because the sum was too small to utilize the help of a collection agency, he would have to collect the money himself. Glaser asserted that he tried to contact the customer by telephone, only to be told that he would have to sue the customer in order to collect anything from him. Glaser contended that he sent letters to the customer requesting reimbursement as well as purporting to place a "curse" on the customer until the debt was repaid. In response, the customer made a late night phone calls to Glaser's home, where he threatened to take legal action against Glaser that might cost him his job and threatened Glaser's wife. With a concern for the gravity of the customer's threats, Glaser claimed that he ceased all efforts to collect the subject debt.

About six weeks later, in early March 1996, the customer allegedly sent a complaint letter concerning Glaser's "curse" letter to a high-profile, local television "consumer crusader". Two months later, with no notice to Glaser, the television celebrity came to the Edwards office with a film crew to discuss the letter which Glaser honestly acknowledged having written. Glaser asserted that the reporter agreed with him that neither his nor the firm's name would be aired in any broadcast.

Glaser fully reported the incident and its particulars to numerous Edwards colleagues and was assured that he had handled the situation appropriately. Nonetheless, the local television station ran promotional features on the upcoming story and on May 9, 1996, Glaser was fired by his office manager. The episode was broadcast on May 13, 1996.

At the time of his termination, Glaser had worked for Edwards for 13 years without incident or customer complaint and he was the oldest broker in the office. Nonetheless, Edwards' office manager allegedly humiliated Glaser by instructing him to turn over his office key and to leave immediately without permitting Glaser the opportunity to take any of his files or records. Furthermore, Glaser contended that the office manager threw out much of what Glaser had accumulated in his years with Edwards, including old chart books which predated Glaser's employment with Edwards and antique stock certificates of great value to Glaser.

As a result of his termination, Glaser allegedly sought counseling and was subsequently diagnosed with clinical deep depression. Nonetheless, Glaser attempted to mitigate his damages by interviewing for a new job and he eventually accepted employment with another firm as a registered investment advisor, a decision which resulted in a severe reduction in client assets under his stewardship. Glaser allegedly suffered a great embarrassment and humiliation at having to explain to his family, clients, and community why he was forced to leave Edwards.

Glaser asserted: that he was terminated in violation of Chapter 21 of the Texas Labor Code, by unlawfully discriminating against him on account of his age; that Edwards intentionally inflicted great emotional distress upon Glaser; and that Edwards intentionally interfered with Glaser's business and contractual relationships.

Respondent Edwards denied the allegations set forth in Statement of the Claim as they related to any wrong doing on its part. Specifically, Edwards contended that: Glaser's claims that termination of his employment was motivated by unlawful age discrimination, that his adverse circumstances were the fault of others and that he was a model of good reason could not be farther from the truth. Rather, Edwards argued that this case was about the exercise of appalling poor judgement and the natural consequences which followed, when he directed to a customer of Edwards a profane, threatening letter.

Specifically, Edwards contended that the age discrimination claim was frivolous since Glaser was 51 years of age when he was hired. Edwards argued that it was counter-intuitive to suggest that Glaser's age provided a basis for his termination, when he was already in the protected class at the time Edwards chose to employ him.

Edwards stated that it was reflected in paragraph 16 of the Agreement that Glaser promised that he "...will become familiar with and abide by the rules and regulations of Edwards, the NASD, the New York stock exchange and other securities and commodities exchanges of which Edwards is a

member." Edwards also pointed out that paragraph 17 of the Agreement stated that Glaser would "clear any business correspondence written by him with his Branch Manager or with Vice President of Edwards prior to mailing such correspondence and retain duplicate copies of all such correspondence." Edwards explained that Glaser completely disregarded Edwards' regulations and those of the securities industry.

Edwards claimed that since Glaser did not allow Edwards' branch manager to see "the Curse" letter prior to its mailing, Glaser violated both industry regulations and firm guidelines. Although Edwards acknowledged the customer's failure to meet his obligations, Edwards contended that it in no way justified or excused Glaser's conduct.

Furthermore, Edwards explained that Glaser was "at will" employee which was confirmed in Section A.6 of the Branch Employee Information Handbook, as well as at Section A.16, the Corrective Action/ Termination Section. Finally, Glaser asserted that some or all of Glaser's claims were barred by laches, waiver or estoppel.

RELIEF REQUESTED

Claimant, Otto S. Glaser requested an award for the following: \$280,000.00 in actual damages; \$105,000.00 for future employer 401(k) contributions; \$50,000.00 to \$100,000.00 in additional lost employment benefits; damages in an undisclosed amount for mental anguish and emotional distress; attorneys' fees and interest.

Respondent, A.G. Edwards & Co., Inc. requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent, A.G. Edwards & Co., Inc. moved for a directed verdict at the hearing. After hearing oral arguments and careful consideration, the undersigned arbitrators denied the motion.

The parties agreed that the Award in this matter may be executed in counterpart copies. 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 pleading, 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 submitted by Claimant, Otto S. Glaser is denied in its entirety and dismissed with prejudice.
2. Other than forum fees addressed below, all 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 for each pre-hearing conference, if any. There were four (4) hearing sessions \times \$750.00 = \$3000.00 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 \$500.00 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, Otto S. Glaser.

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 deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent, A.G. Edwards & Sons, Inc.

Pursuant to § 10205 of the Code, Claimant, Otto S. Glaser is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$750.00 in additional forum fees.

Pursuant to § 10205 of the Code, Respondent, A.G. Edwards & Sons, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,500.00 in forum fees.

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

Dissenting Arbitrator's Signature

J. Randle Henderson, Esquire
J. Randle Henderson, Esquire
Chairperson
Public Arbitrator

November 13, 1997

Dated:

Concurring Arbitrators' Signatures

Martha Failing, Esquire
Martha Failing, Esquire
Panelist
Public Arbitrator

November 18, 1997

Dated:

Laila M. Asmar, Esquire
Laila M. Asmar, Esquire
Panelist
Industry Arbitrator

November 19, 1997

Dated:

For NASD use only:

Date Award was served on the parties: November 25, 1997