

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Richard S. Johnston,

Claimant,

v.

No. 98-00462

A.G. Edwards & Sons, Inc.,

Respondent.

REPRESENTATION OF PARTIES

Claimant Richard S. Johnston ("Claimant") was represented by Charles P. Kelly, Esq. of Farmington Hills, Michigan.

Respondent A.G. Edwards & Sons, Inc. ("Respondent") was represented by William S. Port, Esq. of A.G. Edwards & Sons, Inc. located in St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about February 9, 1998.

Claimant's Submission Agreement was signed on January 14, 1998.

The Statement of Answer was filed on or about March 23, 1998.

Respondent's Submission Agreement was signed on March 18, 1998.

HEARING INFORMATION

The hearing was held on October 13, 1998 for one (1) session in Southfield, Michigan.

CASE SUMMARY

Claimant was a participant in Respondent's Retirement and Profit Sharing Plan during his time of employment with Respondent. According to the Form U-5 on file, Respondent terminated Claimant's employment because Claimant purchased a security against management instructions.

Respondent contended that this act was so egregious that it warranted the classification of Claimant's discharge to be a termination with "aggravated cause," thereby resulting in Claimant forfeiting the vested portion of the contributions Respondent had made to the Plan on Claimant's behalf throughout his time of employment with Respondent.

In the Statement of Claim, Claimant disagreed with Respondent's classification of his termination as one involving "aggravating cause." Claimant contended that he purchased the security in question due to an oversight. Claimant asserted that when he realized this oversight, he immediately brought the matter to the attention of his manager. Claimant maintained that he was not trying to hide anything or do anything wrong. Claimant contended that the manager used the oversight as the reason to terminate Claimant's employment with Respondent. Claimant alleged that Respondent was not harmed in any way by the stock purchase and that the act in no way warranted the classification of his termination as one involving aggravated cause. Claimant contended that Respondent's retention of Claimant's vested employer contributions is unfair and inappropriate.

Respondent denied all liability in the Statement of Answer. Respondent alleged that Claimant was terminated for insubordination which is among the causes for termination which will result in a forfeiture of firm contributions. Respondent contended that purchasing stock for a client which Claimant had explicitly been told not to purchase falls within the definition of insubordination.

RELIEF REQUESTED

Claimant requested an award of \$14,800 which represents the value of Claimant's vested employer contributions in the Plan (\$14,000) and the reimbursement to Claimant of the filing fees and hearing fee paid with respect to this arbitration (\$800), exclusive of interest and attorney fees.

Respondent requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of attorney fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

None.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- (1) That the Statement of Claim is dismissed in its entirety with prejudice;
- (2) That other than forum fees which are specified below, the parties shall each bear their own costs, attorney fees and expenses incurred in this matter; and
- (3) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$300 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) hearing session x \$300 = \$300 in forum fees. Pursuant to Rule 10205(b) of 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 Rule 10205(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees a portion of the hearing session deposit in the amount of \$150 previously deposited by the Claimant (1/2 forum fees).

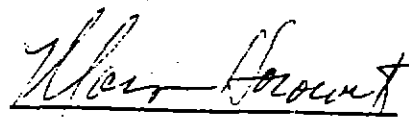
Pursuant to Rule 10205(c) of the Code, Respondent is liable for and shall pay forum fees in the amount of \$150 (1/2 forum fees).

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Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Regulation, Inc. the \$400 member surcharge previously invoiced.

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

Arbitrator's Signature:



Marvin I. Horowitz, Esq.
Public Arbitrator

11/3/98
Dated:

For NASD Regulation use only:
Date award served on parties:

NOVEMBER 10, 1998