

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Robert Adams, (Claimant) vs. A.G. Edwards & Sons, Inc. and William Driscoll, (Respondents)

Case Number: 99-04848

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant, Robert Adams, hereinafter referred to as "Claimant": Anthony P. Alessi, Esq., Concannon Law Offices, Marshfield, MA.

Respondents, A.G. Edwards & Sons, Inc. ("Edwards") and William Driscoll ("Driscoll"), hereinafter collectively referred to as "Respondents": Nuviah Shirazi, Esq., Litigation Counsel, A.G. Edwards & Sons, Inc., St. Louis, MO.

CASE INFORMATION

Statement of Claim filed on or about: October 25, 1999.

Claimant signed the Uniform Submission Agreement: October 25, 1999

Statement of Answer filed by Respondents on or about: February 11, 2000

Edwards signed the Uniform Submission Agreement: February 11, 2000.

Driscoll signed the Uniform Submission Agreement: June 8, 2000.

CASE SUMMARY

Claimant asserted the following causes of action: violations of the Massachusetts Uniform Securities Act; breach of contract; misrepresentation; and respondeat superior. Claimant's claim involved Biomune options and the stocks of IMS, Inc., Medalliance, Inc., TMM, Inc., Artex, and Techbase.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant was forwarded written confirmation statements and monthly statements reflecting the activity in his account, and did not register with Respondents a timely complaint after receiving said statements; Claimant's failure to timely object to the transactions is deemed to be a ratification, waiver, and estoppel of Claimant's right to recovery; all of the transactions in Claimant's account were executed

with the express authorization of Claimant; by failing to exercise the degree of care over his affairs and investments which an ordinarily prudent investor would exercise, Claimant caused or contributed to the alleged damages of which he complains herein and is thus barred by his own contributory negligence and/or comparative fault from recovering such alleged damages; Claimant was aware from the outset of the risks and potential profits and losses associated with investing in securities and voluntarily assumed such risks; the damages allegedly suffered by Claimant were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in Claimant's account for which Respondents are not liable or responsible; to the extent Claimant is seeking recovery of attorneys' fees, costs, and interest, such request fails to state a claim for which relief may be granted, as there is no legal basis for recovery of same; Claimant failed to act promptly and with due diligence to mitigate his damages after he knew or should have known of the alleged acts or omissions of which he complains; Claimant's cause of action fails to state a claim for which relief may be granted; and Claimant is time barred from bringing this cause of action.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$121,942.00, together with interest at 6% per year from November 1993, costs, and reasonable attorneys' fees.

Respondents requested that Claimant's claims be dismissed, with prejudice, and that they be awarded all costs incurred in connection with this matter, reasonable attorneys' fees, and such other relief that is deemed just and proper by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

In accordance with Rule 10313 of the NASD Code of Arbitration Procedure, the parties agreed to proceed with a Panel of two arbitrators following the withdrawal of arbitrator James E. O'Neil.

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.

AWARD

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

The Arbitration Panel has listened to the testimony and carefully evaluated the evidence. The Panel, Arbitrators Drohan and Kropp, reach the following facts and conclusions.

Mr. Adams, the Claimant, contends that he began his affiliation with A.G. Edwards as a relatively inexperienced and unsophisticated client in 1993. Adams was introduced to his broker, Mr. Williams Driscoll of the A.G. Edwards Plano, TX office, by co-worker, Mr. Tom Carroll. Carroll had remarkable success in the stock market apparently turning less

than \$200,000 into one million in about one year through highly speculative investments. Interestingly, Driscoll has inherited Carroll as a client when Carroll's previous broker left Merrill where Driscoll was also then employed. Carroll proceeded to follow Driscoll to A.G. Edwards.

Adams, an executive in the medical field, was at that time a relatively high income high net worth individual. He opened his brokerage account in October 1993 with \$90,000 and from 1993-1996 bought and sold a small number of mainly OTC stocks, most of which are at issue here. Unlike his co-worker, Tom Carroll, Adams was remarkably unsuccessful. Mr. Adams claims he was naive and inexperienced and that Driscoll failed to properly advise him and that the A.G. Edwards Plano, TX office failed to properly supervise his broker, Mr. William Driscoll. Not surprisingly, Driscoll and A.G. Edwards paint an entirely different picture. They claim that Adams, a financially flush individual who told them he had a fair amount of experience with the market, sought, like Carroll, to get rich quick through speculative investing. Unfortunately, Adams did not possess Carroll's skill or luck, whichever was in fact the source of Carroll's wealth.

To fully understand this case, a brief discussion of the securities at issue is helpful to fully understand this case. Essentially, they fall into four categories.

First, there are two private placements, Artex in which Adams lost about \$15,000 and Techbase in which Adams lost \$25,000. Adams claim that Driscoll inappropriately recommended these two investments thereby causing Adams to lose \$40,000. The Panel agrees that these were inappropriate investments for Adams (even accepting that he qualified to subscribe to them). The Panel does not conclude, however, that Driscoll recommended them and Driscoll does appear to be an honest witness. The weight of the evidence does suggest that Driscoll facilitated the purchase of these private placements, Artex and Techbase, for Adams by providing information and passing along his name to Shareholders Solutions (apparently a public relations firm). In hindsight, this was probably unwise. But it appears that the impetus for these investments came from Carroll, and that Driscoll was simply trying to help a client obtain information. Driscoll's un rebutted testimony was that he received no commissions either from Artex, Techbase, or Shareholder Solutions. It is more likely that Carroll, a colleague, suggested these investments than that Driscoll did.

Second, there are two stocks, one large block trade of TMMI and another a series of trades in IMS, made through Smith Barney, purportedly upon Driscoll's recommendation to do just that. Those losses total almost \$33,000. The testimony conflicts here: Adams' testimony was that Driscoll advised him that he, Driscoll, could no longer sell these stocks, but that Adams should buy them through another broker. Driscoll denies these conversations. Although there is documentary evidence to indirectly support such an unusual proposition, the weight of the evidence (though not clear-cut) requires the Panel to conclude that Adams

did not prove (sustain his burden of persuasion) that Driscoll recommended to Adams that he, Adams, buy stock through another brokerage house. Again, Driscoll would receive no commission on stock purchases (as well as subsequent sales) made through another broker and also would risk losing the entire account outright to another firm.

Third, there is the loss of \$2,600 in Biomune. In closing argument, counsel for Claimant abandoned any claim for damages from Biomune.

Fourth, are two stocks addressed above, IMS AND TMMI, handled through the A.G. Edwards Plano, TX office. Here the record is far more complex.

Driscoll admitted that he was terminated for getting a handful of his clients, including Adams, entangled in a series of inappropriate stocks, specifically including IMS, TMMI, and other Shareholder Solutions' corporate clients' stocks. Especially telling are the several documents from the A.G. Edwards Compliance Office warning Driscoll specifically, and the staff generally in follow-up meetings, against involvement in IMS, TMMI, and other Shareholder Solutions' corporate clients' stocks. These warnings do not occur in a vacuum.

A.G. Edwards prides itself on being a conservative, full-service brokerage firm. Driscoll did not suggest suitable investments for Adams which could have helped him meet his goals. This was so, despite monthly phone calls between Adams and Driscoll. Rather, Driscoll seems to have passively managed the Claimant's account. That approach may have stemmed from his inheriting Carroll's account, but that does not constitute a valid excuse for his handling of Adams' account. Adams seems to have been left to fend for himself. For example, there are plenty of growth and speculative stocks that are not "penny stocks" or OTC stocks. Mr. Woods testified that during the 1990's Cisco would have constituted a "speculative" stock. There was never any Cisco, however, or any similar stock in the Adams account. It does not even appear that at any time from 1993 - 1996 were any of the stocks on A.G. Edwards recommended list ever recommended by Driscoll to Adams. Given Adams' goals and objectives, this was not an appropriately balanced portfolio.

Moreover, the Panel does not fully credit the testimony of Mr. Woods. What emerges from this record is an appalling lack of supervision in the A.G. Edwards Plano, TX office. The Panel reluctantly concludes that office both failed to properly supervise Driscoll and to remedy that initial failure with appropriate counseling of his clients, both before and after Driscoll's departure.

In summary, Adams is not blameless, and a good deal of his losses are attributable to his conduct (for which the Panel awards him no damages. Indeed, Mr. Adams seems to have learned little from his investment experiences at A.G. Edwards). But the A.G. Edwards Plano, TX office is not blameless either. The weight of the evidence strongly suggests that

office was well aware of Driscoll's poor judgement in involving some of his clients in IMS, TMMI, and other Shareholder Solutions' corporate clients. The A.G. Edwards Plano, TX office chose to solve that problem, not by alerting and apprising its clients in a timely manner to the risks and dangers of these stocks and the reason why A.G. Edwards wisely concluded that these were unsuitable stocks for its clients, but by terminating Driscoll.

The Panel concluded that the losses suffered by Adams in IMS and TMMI stock handled through A.G. Edwards do constitute damages for which A.G. Edwards is responsible. The sum is about \$24,400. As Respondents' counsel correctly points out, Adams has a duty to mitigate his losses. Here this mitigation involves two factors. Adams did get tax losses on his 1995 and 1996 income taxes that reduced his net tax obligations. Additionally, Adams could have sold some of the stock at issue sooner, reducing his losses somewhat. Accordingly, the Panel reduces the sum of \$24,400 to \$16,000. Counsel for Claimant also seeks simple interest at 6% annually from 1993. The Panel, however, concludes that in this case 6% interest should be paid only from January 1, 1997.

The Panel holds that the Claimant shall receive from Respondent A.G. Edwards \$16,000 plus 6% simple interest from January 1, 1997. The Panel also holds that each side shall bear its own costs and attorney fees, but that all NASD Forum Fees shall be paid in full by the Respondents.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, A.G. Edwards & Sons, Inc. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00 = \$ 900.00
Pre-hearing conferences: February 20, 2001 1 session
May 24, 2001 1 session

One (1) Pre-hearing session with Panel x \$1,125.00 = \$1,125.00
Pre-hearing conference: January 17, 2001 1 session

Four (4) Hearing sessions x \$1,125.00 = \$4,500.00
Hearing Dates: June 12, 2001 2 sessions
June 13, 2001 2 sessions

Total Forum Fees = \$6,525.00

The Panel has assessed all of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee = \$ 300.00
Total Fees = \$ 300.00
Less payments = \$1,425.00
Refund Due Claimant = \$1,125.00

2. Edwards be and hereby is solely liable for:

Member Fees = \$4,600.00
Total Fees = \$4,600.00
Less payments = \$4,600.00
Balance Due NASD Dispute Resolution, Inc. = \$ 0.00

3. Respondents be and hereby are jointly and severally liable for:

Forum Fees = \$6,525.00
Balance Due NASD Dispute Resolution, Inc. = \$6,525.00

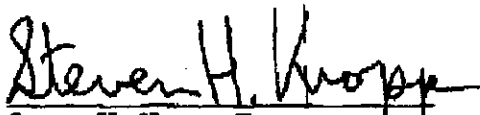
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL


Steven H. Kropp, Esq.
Thomas H. Drohan, Esq.

Public Arbitrator, Presiding Chair
Industry Arbitrator

Concurring Arbitrators' Signatures



Steven H. Kropp, Esq.
Public Arbitrator, Presiding Chair



Signature Date

Thomas H. Drohan, Esq.
Industry Arbitrator

Signature Date

July 25, 2001
Date of Service (For NASD office use only)


ARBITRATION PANEL

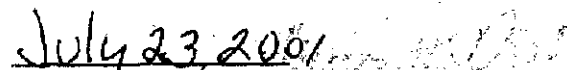
Steven H. Kropp, Esq.	-	Public Arbitrator, Presiding Chair
Thomas H. Drohan, Esq.	-	Industry Arbitrator

Concurring Arbitrators' Signatures

Steven H. Kropp, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Thomas H. Drohan, Esq.
Industry Arbitrator


Signature Date July 23, 2001

July 25, 2001
Date of Service (For NASD office use only)