

**NASD DISPUTE RESOLUTION, INC.**

**STIPULATED AWARD**

**IN THE MATTER OF THE ARBITRATION BETWEEN**

**Name of Claimants**

**ROBERT E. AND SUZANNE R.  
STUBBLEFIELD**

**NASD Case No. 00-00411**

**Names of Respondents**

**A.G. EDWARDS & SONS, INC.  
AND DON KAINER**

**REPRESENTATION OF THE PARTIES**

Claimants Robert E. and Suzanne R. Stubblefield: William S. Shepherd, Esq. and Kirk George Smith, Esq., Shepherd & Smith, P.C., Houston, Texas

Respondents A.G. Edwards & Sons, Inc. and Don Kainer: M. Jane Matoesian, Esq., A.G. Edwards & Sons, Inc., St. Louis, Missouri.

**CASE INFORMATION**

Original Statement of Claim of Robert E. and Suzanne Stubblefield filed on or about January 20, 2000.

Claimants Signed the Uniform Submission Agreement on January 20, 2000.

Joint answer of A.G. Edwards & Sons, Inc. and Don Kainer filed on or about March 30, 2000.

A. G. Edwards & Sons, Inc. signed the Uniform Submission Agreement on March 30, 2000.

Don Kainer signed the Uniform Submission Agreement on March 30, 2000.

Amended Answer of A.G. Edwards & Sons, Inc. and Don Kainer filed on or about January 23, 2001.

Claimants' filed a motion to dismiss Don Kainer on February 16, 2001.

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CASE SUMMARY

In their Original Statement of Claim, Claimants Robert E. and Suzanne R. Stubblefield alleged that Respondent Don Kainer improperly handled their joint account and Mr. Stubblefield's Individual Retirement Account while those accounts were maintained at Edwards. The Stubblefields alleged that, from 1994 through 1998, Kainer recommended speculative, unsuitable stocks and misrepresented the nature of the transactions in these stocks, North American Mortgage Co., Submicron Systems Corp., Variflex Inc., Serplex Inc. and IMP stock and options. The Stubblefields alleged that they lost \$32,447 in their joint account and \$35,740 in Mr. Stubblefield's IRA in these securities.

In their Answer, Edwards and Kainer denied all allegations of wrongdoing asserted by the Stubblefields and alleged that Mr. Stubblefield was 54 years old, a wealthy, sophisticated investor and astute business man, with approximately 40 years of past investment experience. They had opened accounts and traded various types of investments at several different brokerage firms over the years. At the time they opened accounts with Edwards, the Stubblefields were knowledgeable, experienced traders who had previously bought and sold many of the same types of investments as those complained of in their Statement of Claim. While at Edwards, the Stubblefields wanted to actively participate in the stock market buying and selling various individual equities, and were well aware of the risks involved with doing so. The Stubblefields did not complain to Edwards until after some losses were sustained. In particular, Mr. Stubblefield was an avid stock trader who was intimately involved in the management of the accounts, often selecting many of his own investments without Mr. Kainer's recommendation.

Edwards and Kainer also asserted the following affirmative defenses:

1. As a result of the Stubblefields' failure to object or notify Edwards of the acts and omissions of which he complained after receipt of written confirmations, account statements and other documents evidencing or setting forth transactions in their accounts, they are barred from recovering from Edwards under their account agreements with Edwards and under the Uniform Commercial Code as enacted in the State of Texas.

2. As a result of the Stubblefields' failure to notify Edwards of the alleged acts and omissions of which they complain promptly after receipt of written confirmations, monthly statements and other documents evidencing or setting forth transactions in their accounts and, in any event, promptly after they discovered or reasonably should have discovered the alleged acts or omissions, they were barred from recovering from Edwards under the doctrines of ratification, account stated, estoppel, waiver and laches because Edwards relied upon their silence.

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3. The Stubblefields failed to act promptly and with due diligence to mitigate their damages.

4. The Statement of Claim and each count thereof failed to state a claim upon which relief can be granted.

5. The Stubblefields waived and/or are estopped from asserting claims against Edwards by virtue of their own contributory fault in their conduct and dealings with Edwards and Kainer.

6. The Stubblefields ratified the alleged conduct about which they complained.

7. The Stubblefields' claims are barred by the applicable statutes of limitation.

8. To the extent the Statement of Claim alleges a violation of the rules of National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc. or any other self-regulatory organization, the Claim fails to state a claim for relief as there is no private cause of action for the violation of such rules or regulations.

9. The Stubblefields' allegations under the Texas DTPA should be dismissed or stayed because they failed to file the prerequisite notice pursuant to Section 17.505 of the Act.

### RELIEF REQUESTED

Claimants requested the following relief against the Respondents:

Compensatory Damages	\$100,000.00
Interest	unspecified
Punitive Damages	unspecified
Attorney's Fees	unspecified
Costs	unspecified

Respondents requested that the claims against them be dismissed.

### OTHER ISSUES CONSIDERED & DECIDED

The parties filed with NASD Dispute Resolution, Inc. a joint motion to approve this Stipulated Award and that the undersigned arbitrators (the "Panel") enter an Order expunging all references to this case from the Central Registration Depository ("CRD") records of Kainer.

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### AWARD

After considering the pleadings and the motion to approve this Stipulated Award, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents Edwards and Kainer are hereby dismissed.
2. The panel recommends the expungement of all references to the above-captioned arbitration from Respondent Kainer's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Kainer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directives.
3. All parties shall bear their respective costs, including attorney fees. Any fees incurred by NASD Dispute Resolution in conjunction with the panel's entry of the Stipulated Award are to be assessed against Respondent Edwards.
4. Any and all relief not specifically addressed herein is denied.

### FEES

#### Filing Fees

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

Initial claim filing fee	= \$ 375.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is A.G. Edwards & Son, Inc.

Member surcharge	= \$ 200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

#### 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with panel x \$1200.00	= \$ 1200.00
Pre-hearing Date: August 18, 2000	1 session

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One (1) Pre-hearing session with single arbitrator x 450.00 = \$ 450.00  
Pre-hearing Date: December 12, 2000 1 session  
 Total Forum Fees = \$1650.00

The Panel had assessed forum fees of \$ 825.00 to Claimants.  
 The Panel has assessed forum fees of \$825.00 to Respondent A.G. Edwards.

### Fee Summary

1. Claimants, Robert E. and Suzanne R. Stubblefield are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
Forum Fees	= \$ 825.00
Total Fees	= \$1200.00
<u>Less payments</u>	= \$1,575.00
Balance refunded by NASD Dispute Resolution, Inc.	= \$1,200.00

2. Respondent, A.G. Edwards & Son Inc., be and hereby is solely liable for:

Forum Fees	= \$ 1650.00
<u>Member Fees</u>	= \$ 4300.00
Total Fees	= \$ 5950.00
<u>Less payments</u>	= \$ 4,325.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1625.00

All balances are due to NASD Dispute Resolution, Inc.

### Concurring Arbitrators' Signatures

\_\_\_\_\_  
 William S. Hopkins  
 Public Arbitrator, Presiding Chair

\_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Edward W. Burnett  
 Public Arbitrator

\_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Jonathan Burke Rada, CFP  
 Industry Arbitrator

\_\_\_\_\_  
 Signature Date

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 William S. Hoppe  
 Public Arbitrator Presiding Chair

9/18/01  
 Signature Date

Edward W. Burnett  
 Public Arbitrator

Signature Date

Jonathan Burke Rada, CFP  
 Industry Arbitrator

Signature Date

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Concurring Arbitrators' Signatures

William S. Hopkins  
 Public Arbitrator, Presiding Chair



Edward W. Burnett  
 Public Arbitrator

Signature Date

September 7, 2001

Signature Date

Jonathan Burke Rada, CFP  
 Industry Arbitrator

Signature Date

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William S. Hopkins  
Public Arbitrator, Presiding Chair

Signature Date

Edward W. Burnett  
Public Arbitrator

Signature Date

  
Jonathan Burke Rada, CFP  
Industry Arbitrator

9/6/01  
Signature Date



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Date of Service (For NASD-DR office use only)