

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

David Baird Montgomery

Case No. 00-00684

Name of Respondent

A.G. Edwards & Sons, Inc.

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**REPRESENTATION OF PARTIES**

For David Baird Montgomery, hereinafter referred to as "Claimant": William A. Coates, Esq., Love, Thornton, Arnold & Thomason, P.A., Greenville, South Carolina.

For A.G. Edwards & Sons, Inc. ("A.G. Edwards"), hereinafter referred to as "Respondent": Phyllis A. Hartrich, Litigation Counsel, Respondent A.G. Edwards, St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: February 15, 2000.

Claimant signed the Uniform Submission Agreement on: February 9, 2000.

Statement of Answer filed by Respondent on or about: March 31, 2000.

Respondent signed the Uniform Submission Agreement on: March 28, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of duty of good faith; and 2) breach of fair dealing. The causes of action relate to Claimant's termination of employment with Respondent and Respondent's subsequent failure to pay a profit sharing award to Claimant.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted that the profit sharing award had not vested under the terms of the profit sharing plan.

**RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$9,600.00; 2) interest; 3) costs; and 4) attorneys' fees.

Respondent requested: 1) dismissal of the Statement of Claim; 2) costs; and 3) attorneys'

fees.

### **OTHER ISSUES CONSIDERED AND 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.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrator (the "Arbitrator") has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable and shall pay to Claimant compensatory damages in the amount of \$734.40, pre-judgment interest specifically excluded. Post-judgment interest shall accrue at the legal rate under North Carolina law in accordance with Rule 10330(h) of the NASD-DR Code of Arbitration Procedure.
2. Claimant's request for attorneys' fees is denied.
3. All other requests for relief not specifically addressed herein are denied.

### **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 | = \$75.00 |
|--------------------------|-----------|

#### **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 party.

|                  |            |
|------------------|------------|
| Member surcharge | = \$300.00 |
|------------------|------------|

#### **Adjournment Fees**

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

#### **Forum Fees and Assessments**

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with

the Arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

|   |            |
|---|------------|
| Two (2) Pre-hearing sessions with the Arbitrator x \$250.00 | = \$500.00 |
| Pre-hearing conferences: July 20, 2000 1 session            |            |
| November 13, 2000 1 session                                 |            |
| One (1) Hearing session x \$250.00                          | = \$250.00 |
| Hearing Date: January 18, 2001 1 session                    |            |
| Total Forum Fees  | = \$750.00 |

The Arbitrator has assessed the total forum fees of \$750.00 to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant be and hereby is solely liable for:

|   |                  |
|---|------------------|
| Initial Filing Fee                        | = \$75.00        |
| Total Fees                                | = \$75.00        |
| <u>Less payments</u>                      | <u>= \$75.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$0.00         |

Respondent be and hereby is solely liable for:

|   |                    |
|---|--------------------|
| Member Fees                               | = \$ 300.00        |
| Forum Fees                                | = \$ 750.00        |
| Total Fees                                | = \$1,050.00       |
| <u>Less payments</u>                      | <u>= \$ 300.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$750.00         |

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

**Arbitrator's Signature**

\_\_\_\_\_/s/  
Michael R. Williams  
Industry Arbitrator

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

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Arbitrator's Signature



Michael R. Williams  
Industry Arbitrator

1-28-01  
Signature Date

NASD Dispute Resolution, Inc.  
Arbitration No. 00-00684  
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January 29, 2001  
Date of Service