

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Michael V. Martin

and

00-03406  
Phoenix, Arizona

Name of Respondents

A.G. Edwards & Sons, Inc.  
Karen Davenport

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**REPRESENTATION OF PARTIES**

Michael V. Martin ("Claimant") was represented by George R. Brown, Esq., Whitehill, Linden, Grynkeiwich & Halladay, P.C., Tucson, Arizona.

A.G. Edwards & Sons, Inc. ("Respondent A.G. Edwards") and Karen Davenport ("Respondent Davenport") (collectively as "Respondents") were represented by Michael Naccarato, Esq., A.G. Edwards & Sons, Inc., St. Louis, Missouri.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 31, 2000. Submission Agreement of Claimant Michael V. Martin was signed on July 26, 2000.

Statement of Answer was filed by Respondents A.G. Edwards & Sons, Inc. and Karen Davenport on or about January 19, 2001. Submission Agreement of Respondent A.G. Edwards & Sons, Inc. was signed on December 8, 2000 by Stephen G. Sneeringer. Submission Agreement of Respondent Karen Davenport was signed on January 16, 2001.

**CASE SUMMARY**

Claimant alleged that Respondent Davenport made material misrepresentations on the new account form, including misstatements of his net worth and investment experience. It was also alleged that Respondent Davenport made a number of unauthorized transactions in his IRA account including a number of premature distributions

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that all activity, including distributions from Claimant's IRA account were discussed with him

and approved by him. It was stated that all money withdrawn from Claimant's IRA account was used for the house that they were building. Respondents further stated that the investments recommended to Claimant by Ms. Davenport were suitable given Claimant's age, income, net worth and investment objectives. In addition, Respondents stated that the trading in the account was neither excessive nor done solely to generate commission. Respondents stated that the decrease in the value of the IRA account was the result of market forces beyond the control of Respondents. Finally, Respondents stated that the Claimant did not complain about the management of his account until after the termination of the personal relationship between Claimant and Respondent Davenport. Respondent A.G. Edwards stated that the account was properly supervised.

#### **RELIEF REQUESTED**

Claimant requested an award of damages in a sum not less than \$100,000.00.

Respondents requested an order from the arbitrators dismissing all claims with prejudice, for all costs and expenses incurred herein, the expungement of the matter from Respondent Davenport's CRD, and for such other relief as the arbitrators deem appropriate.

#### **OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

#### **AWARD**

After considering the pleadings, 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 claims asserted in this matter shall be and hereby are denied and dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Karen Davenport's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to M Members 99-09 and 99-54, Respondent Karen Davenport must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
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.

4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **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

#### **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 & Sons, Inc.

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

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

The Arbitration 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 \$1,125.00 = \$1,125.00  
Pre-hearing conference: May 21, 2001 1 session

Two (2) Hearing sessions x \$1,125.00 = \$2,250.00  
Hearing Date: January 24, 2002 2 sessions

Total Forum Fees = \$3,375.00

The Arbitration Panel has assessed \$1,687.50 of the forum fees to Michael V. Martin.

The Arbitration Panel has assessed \$1,687.50 of the forum fees to A.G. Edwards & Sons, Inc.

**Fee Summary**

Claimant, Michael V. Martin, shall be and hereby is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= <u>\$1,687.50</u>
Total Fees	= \$1,987.50
<u>Less payments</u>	= <u>\$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 562.50

Respondent, A.G. Edwards & Sons, Inc., shall be and hereby is liable for:


Member Fees	= \$4,600.00
<u>Forum Fees</u>	= <u>\$1,687.50</u>
Total Fees	= \$6,287.50
<u>Less payments</u>	= <u>\$4,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,687.50

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

John J. Balitis, Esq. - Public Arbitrator, Presiding Chair  
Edward C. Rapp, J.D. - Public Arbitrator  
Jack Gunter - Non-Public Arbitrator

Concurring Arbitrators:

  
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John J. Balitis, Esq.  
Public Arbitrator, Presiding Chair

1/24/02  
\_\_\_\_\_  
Signature Date

  
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Edward C. Rapp, J.D.  
Public Arbitrator

01/24/02  
\_\_\_\_\_  
Signature Date

  
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Jack Gunter  
Non-Public Arbitrator

1/24/02  
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Signature Date