

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

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In the Matter of the Arbitration Between:

Jeffrey T. Scymanski, (Claimant) vs. A.G. Edwards & Sons, Inc., Lawrence B. Lawson, and  
Brian J. McCafferty, (Respondents)

Case Number: 00-03960

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Jeffrey T. Scymanski, hereinafter referred to as "Claimant": Mitchell H. Cobert, Esq., a sole practitioner, Morristown, NJ. Previously represented by: Albert A. Rapoport, Esq., a sole practitioner, Boca Raton, FL.

Respondents, A.G. Edwards & Sons, Inc. ("Edwards"), Lawrence B. Lawson ("Lawson"), and Brian J. McCafferty ("McCafferty"), hereinafter collectively referred to as "Respondents": Jeff Jamieson, Esq., Vice President and Counsel, A.G. Edwards & Sons, Inc., St. Louis, MO.

**CASE INFORMATION**

Statement of Claim filed on or about: September 5, 2000.

Amended Statement of Claim filed on or about: October 24, 2000.

Second Amended Statement of Claim filed on or about: April 25, 2001.

Response to Edwards' Counterclaim filed by Claimant on or about: November 13, 2000.

Claimant signed the Uniform Submission Agreement: May 23, 2001.

Statement of Answer filed by Edwards and Lawson on or about: October 24, 2000.

Counterclaim filed by Edwards on or about: October 24, 2000.

Statement of Answer to Amended Statement of Claim filed by Edwards, Lawson, and McCafferty on or about: December 11, 2000.

Statement of Answer to Second Amended Statement of Claim filed by Edwards, Lawson, and McCafferty on or about: May 25, 2001.

Edwards signed the Uniform Submission Agreement.

Lawson signed the Uniform Submission Agreement.

McCafferty did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; breach of fiduciary duty; violation of the prudent management rule; and violation of customer account transfer.

Claimant's claim involved unspecified financial products.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and Amended Statements of Claim and asserted the following defenses: Claimant is barred from recovery against Edwards under his Client Agreement, due to Claimant's failure to object or notify Edwards of the acts and omissions of which he complains within ten days of receipt of written confirmations; Claimant's claims are barred under the doctrines of ratification, account stated, estoppel, waiver, and laches; Claimant failed to act promptly and with due diligence to mitigate his damages; by failing to exercise the degree of care over his affairs and investments which an ordinarily prudent person would exercise, Claimant caused or contributed to the alleged damages of which he now complains; Claimant was aware from the outset of the risks of profit and loss associated with investing in securities, and voluntarily assumed such risk; any damages 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 Edwards is not liable or responsible; the Statement of Claim fails to state a claim against Edwards upon which relief can be granted; and Claimant authorized the alleged conduct of Edwards about which he complains.

In its Counterclaim, Edwards asserted the following cause of action: failure to pay unsecured debit balance in account.

Unless specifically admitted in his Response, Claimant denied the allegations made in the Counterclaim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$1,747,998.10, together with consequential damages, interest, costs, reasonable attorneys' fees, punitive damages, and such other relief as the Panel may consider appropriate.

Respondents requested:

- a. That judgement be entered on behalf of Respondents and against Claimant on the claims of Claimant in this arbitration proceeding; and
- b. Such further relief as the Panel deems appropriate.

In its Counterclaim, Edwards requested compensatory damages in the amount of \$215,745.89, plus interest at the maximum legal rate, all costs and expenses, including attorneys' fees, and such other relief as the Panel may deem just and proper.

During the hearings in this matter, the Panel allowed Edwards to amend the amount of compensatory damages sought in the Counterclaim to \$234,020.71.

In his Response, Claimant requested that the Counterclaim be totally denied.

### **OTHER ISSUES CONSIDERED AND DECIDED**

During the hearings in this matter, Respondents' counsel requested expungement of this matter from the Central Registration Depository ("CRD") records of Respondent Lawson. After due consideration, the Panel denied said expungement request.

McCafferty did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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:

1. Claimant's claims are hereby dismissed in their entirety.
2. Claimant be and hereby is liable for and shall pay to Edwards the sum of \$234,020.71 as compensatory damages, inclusive of interest accrued through November 13, 2001.
3. Lawson's request for expungement of this matter from his CRD record is hereby denied.
4. All other requests for relief are hereby 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	= \$ 500.00
Counterclaim filing fee	= \$ 1,000.00

#### **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	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

#### **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:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: June 19, 2001 1 session	

One (1) Pre-hearing session with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: April 6, 2001 1 session	

Eight (8) Hearing sessions x \$1,200.00	= \$ 9,600.00
Hearing Dates: October 10, 2001 2 sessions	
October 12, 2001 2 sessions	
November 19, 2001 2 sessions	
November 20, 2001 2 sessions	

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Total Forum Fees	= \$11,250.00
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1. The Panel has assessed \$5,625.00 of the forum fees against Claimant.
2. The Panel has assessed \$5,625.00 of the forum fees jointly and severally against Respondents.

#### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= <u>\$5,625.00</u>
Total Fees	= \$6,125.00
<u>Less payments</u>	= <u>\$1,700.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$4,425.00

2. Edwards be and hereby is solely liable for:

Counterclaim Filing Fee	= \$1,000.00
<u>Member Fees</u>	= <u>\$7,600.00</u>
Total Fees	= \$8,600.00
<u>Less payments</u>	= <u>\$8,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

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

<u>Forum Fees</u>	= \$5,625.00
Total Fees	= \$5,625.00
<u>Less payments</u>	= \$1,125.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,500.00

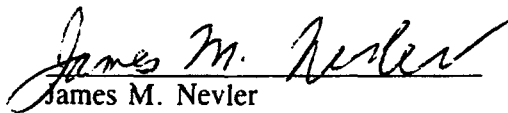
All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

James M. Nevler	-	Public Arbitrator, Presiding Chair
Bruce S. Boltuch	-	Public Arbitrator
Joseph N. Morena	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
James M. Nevler  
Public Arbitrator, Presiding Chair

12-26-2001  
Signature Date

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Bruce S. Boltuch  
Public Arbitrator

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

\_\_\_\_\_  
Joseph N. Morena  
Industry Arbitrator

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Signature Date

January 2, 2002  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

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Bruce S. Boltuch  
Joseph N. Morena

Public Arbitrator, Presiding Chair  
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Signature Date

Bruce S. Boltuch  
Public Arbitrator

1/2/02  
Signature Date

Joseph N. Morena  
Industry Arbitrator

Signature Date

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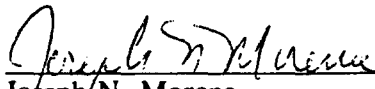
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Bruce S. Boltuch  
Public Arbitrator

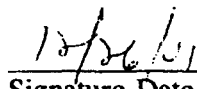
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Signature Date

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Joseph N. Morena  
Industry Arbitrator

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Signature Date

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