

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

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In the Matter of the Arbitration Between: Zimbalist Smith Investments, LLC, Claimant v. A.G. Edwards & Sons, Inc. and Michael A. Groat, Respondents

Case Number: 00-05075

Hearing Site: Portland, Oregon

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**REPRESENTATION OF PARTIES**

For Claimant:

Greg Hendrix  
Hendrix & Brinich, LLP  
Bend, Oregon

For Respondents:

Clay L. Grumke  
A.G. Edwards Sons, Inc.  
St. Louis, Missouri

**CASE INFORMATION**

Statement of Claim filed: November 10, 2000

Claimant's Uniform Submission Agreement signed: November 1, 2000

Joint Statement of Answer filed by Respondents A.G. Edwards & Sons and Michael A. Groat:  
January 9, 2001

Respondent A.G. Edwards & Sons' Uniform Submission Agreement signed: January 9, 2001

Respondent Michael Groat's Uniform Submission Agreement signed: November 28, 2000

**CASE SUMMARY**

Claimant alleged conversion, intentional interference with business relationships and misappropriation of trade secrets. Claimant alleged that these acts occurred in 1999 when David Miller, then a financial consultant with Zimbalist Smith, terminated his employment at Zimbalist Smith to work at A.G. Edwards & Sons.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested damages, including punitive damages and doubled actual damages under the Oregon Trade Secrets Act, in the approximate amount of \$991,000.00.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and reimbursement for costs incurred in this arbitration matter, including travel expenses and attorney fees.

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

Respondent A.G. Edwards filed a Motion to include Linda Zimbalist and William Smith individually as Claimants. The Panel denied the Respondent's Motion on July 5, 2001.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant is hereby awarded damages against Respondent A.G. Edwards and Sons in the amount of \$70,000.00. Interest on this amount shall be paid at a rate of 9% from the date of service of this Award (stamped on page 5 of this Award) until paid in full.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 1,250.00
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### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firms Zimbalist Smith Investments, LLC and A.G. Edwards & Sons, Inc. are parties and the following fees are assessed:

#### **Zimbalist Smith Investments:**

Member Surcharge	= \$ 2,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 3,500.00</u>
Total Member Fees	= \$ 6,100.00

#### **A.G. Edwards & Sons:**

Member Surcharge	= \$ 2,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 3,500.00</u>
Total Member Fees	= \$ 6,100.00

### **Adjournment Fees**

The following adjournment fees are assessed:

No adjournment fees are assessed in this matter.

### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: May 25, 2001 1 session	
(5) Hearing sessions @ \$1,200.00/session	= \$ 6,000.00
Hearings: October 23, 2001 2 sessions	
October 24, 2001 3 sessions	
<b>Total Forum Fees</b>	<b>= \$ 7,200.00</b>

The Panel assessed \$ 7,200.00 of the forum fees to A.G. Edwards & Sons.

### **Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

No additional administrative costs were incurred in this matter.

### **Fee Summary**

1. Claimant, Zimbalist Smith Investments, is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,250.00
<u>Member Fees</u>	<u>= \$ 6,100.00</u>
Total Fees	= \$ 7,350.00
<u>Less Payments</u>	<u>= \$ (8,550.00)</u>
Refund Due Claimant Zimbalist Smith	= \$ (1,200.00)

2. Respondent, A.G. Edwards & Sons, is charged with the following fees and costs:

Member Fees	= \$ 6,100.00
<u>Forum Fees</u>	<u>= \$ 7,200.00</u>
Total Fees	= \$ 13,300.00
<u>Less Payments</u>	<u>= \$ (6,100.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 7,200.00

All balances are payable to NASD Dispute Resolution, Inc. and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

### **ARBITRATION PANEL**

Thomas C. Sand	-	Non-Public Arbitrator, Chair
Thomas P. Joseph	-	Public Arbitrator
Bert P. Krages II	-	Public Arbitrator

Concurring Arbitrators' Signatures

  
Thomas C. Sand  
Chair, Non-Public Arbitrator

November 27, 2001  
Signature Date

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Thomas P. Joseph  
Public Arbitrator

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

\_\_\_\_\_  
Bert P. Krages II  
Public Arbitrator

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

Date Served:

DEC 3 2001

\_\_\_\_\_  
Date of Service

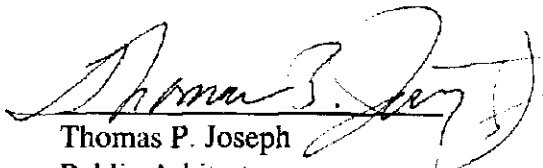
**Concurring Arbitrators' Signatures**

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Thomas C. Sand  
Chair, Non-Public Arbitrator

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Signature Date



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Thomas P. Joseph  
Public Arbitrator

11/28/01

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Signature Date

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Bert P. Krages II  
Public Arbitrator

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Signature Date

Date Served:

DEC 3 2001

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Date of Service

**Concurring Arbitrators' Signatures**

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Thomas C. Sand  
Chair, Non-Public Arbitrator

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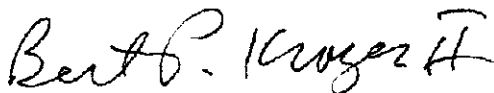
Signature Date

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Thomas P. Joseph  
Public Arbitrator

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Signature Date



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Bert P. Krages II  
Public Arbitrator

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11-26-01

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Signature Date

Date Served:

DEC 3 2001

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Date of Service