

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

John and Joann Vaughan; and,
William C. Ferrill

Case Number: 01-01931

Name of the Respondents

A.G. Edwards & Sons, Inc.;
Josephthal & Co., Inc.; and
SG Cowen Securities Corp.

Hearing Site: Dallas, Texas

REPRESENTATION OF PARTIES

Claimants John and Joann Vaughan ("Vaughn") and William C. Ferrill ("Ferrill"), hereinafter collectively referred to as "Claimants," were represented by Clifton T. Hutchinson, Esq., with the firm of Hughes Luce LLP, located in Dallas, Texas.

Respondent A.G. Edwards & Sons, Inc. ("AGE") was represented by William S. Port, Esq., of A.G. Edwards & Sons, Inc., located in St. Louis, Missouri.

Respondent Josephthal & Co., Inc. ("Josephthal") was represented by David Clouston, Esq., of the firm of Baker & McKenzie, located in Dallas, Texas.

Respondent SG Cowen Securities Corp. ("SGC") was represented by Rodney Acker, Esq. of the firm of Jenkins & Gilchrist, located in Dallas, Texas.

CASE INFORMATION

Statement of Claim filed: April 16, 2001.

Claimants John and Joann Vaughan signed the Uniform Submission Agreement: April 12, 2001.

Claimant Ferrill signed the Uniform Submission Agreement: April 12, 2001.

Claimants' First Amended Statement of Claim filed on or about: February 6, 2002.

Claimants' Second Amended Statement of Claim filed on or about: July 2, 2002.

Claimants' Motion for Leave to File Second Amended Statement of Claim filed on or about: July 10, 2002.

Claimants' Brief in Opposition to SGC's Motion to Dismiss was filed: March 18, 2002.

Statement of Answer filed by Respondent AGE on or about: June 11, 2001.

Respondent AGE signed the Uniform Submission Agreement: June 6, 2001.

Statement of Answer to First Amended Statement of Claim filed by Respondent AGE on or about: February 15, 2002.

Respondent AGE's Response to the Claimants' Motion for Leave to File Second Amended

Statement of Claim filed on or about: July 25, 2002.

Statement of Answer filed by Respondent Josephthal on or about: June 11, 2001.

Respondent Josephthal signed the Uniform Submission Agreement: May 28, 2001.

Respondent Josephthal's Response to the Claimants' Motion for Leave to File Second Amended Statement of Claim filed on or about: July 30, 2002.

Statement of Answer filed by Respondent SGC on or about: July 16, 2001.

Respondent SGC signed the Uniform Submission Agreement: August 21, 2001.

Motion to Dismiss with Integrated Memorandum of Law filed by Respondent SGC on or about: February 15, 2002.

Respondent SGC's Response to the Claimants' Motion for Leave to File Second Amended Statement of Claim filed on or about: July 30, 2002.

Respondent SGC's Reply to Claimants' Brief in Opposition to SGC's Motion to Dismiss filed: March 25, 2002.

CASE SUMMARY

Claimants asserted the following causes of action: violation of the Federal securities law; breach of fiduciary duty; fraud; violation of the Texas Fraud statute; violation of the Texas Securities Act; breach of contract; negligence and gross negligence. The causes of action resulted from transactions in high risk stocks and mutual funds.

Unless specifically admitted in its Answer, Respondent AGE denied the allegations made in the Statement of Claim and asserted the following defenses:

1. As a result of Claimants' failure to notify AGE promptly of their claims after receiving written confirmations, monthly statements and other documents, Claimants are barred from recovery from AGE under the doctrines of ratification, account stated, estoppel, waiver and laches;
2. Claimants failed to promptly mitigate their damages after they knew or should have known of the acts complained of and are barred from recovering damages after such time;
3. Claimants are barred from recovery by their contributory negligence in failing to exercise the degree of care over their affairs and investments which an ordinarily prudent investor would exercise;
4. Claimants were aware from the outset of the risks of profit and loss associated with investing in securities and voluntarily assumed the risk which was the sole and proximate cause of their alleged damages;
5. The damages suffered by Claimants were caused, if at all, by unforeseeable market factors and conditions effecting the value of Claimants' securities for which AGE is not liable or responsible;
6. The Statement of Claim fails to state a claim against AGE upon which relief can be granted; and,
7. The Statement of Claim is barred by the applicable statute of limitations.

Unless specifically admitted in its Answer, Respondent Josephthal denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a basis or claim upon which relief can be granted;
2. At all times material, Claimants were advised of and assumed the risks of market fluctuation, which were the direct and proximate cause of Claimants' losses. Therefore, Claimants are barred and estopped from recovery;
3. The doctrine of laches bars the claim;
4. The Statement of Claim fails to plead fraud with the requisite particularity;
5. All claims asserted against Josephthal must be barred because the Claimants willfully and intentionally ratified the trades in the account by accepting without protest the confirmations and statements which reflected the allegedly unauthorized trades;
6. To the extent that any losses or diminution in value of Claimants' securities may have occurred, such losses were the result of unforeseen market fluctuations and were within the risk assumed;
7. Claimants have failed to compute properly the alleged damages and seek a windfall; and,
8. Parties and non-parties to this proceeding other than Josephthal are responsible for any diminution in the value of Claimants' accounts and, to the extent losses occurred, Josephthal is entitled to contribution for such losses and should not be held jointly and severally liable with the other respondents for the total losses.

Unless specifically admitted in its Answer, Respondent SGC denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a basis upon which relief can be granted;
2. Parties and non-parties to this proceeding other than SGC are responsible for any diminution in the value of Claimants' accounts and, to the extent losses occurred, SGC is entitled to contribution for such losses and should not be held jointly and severally liable with the other respondents for the total losses;
3. The Statement of Claim fails to plead fraud with the requisite particularity;
4. Claimants were advised of and assumed the risk of market fluctuation, Therefore, the Claimants are barred and estopped from recovery as the risks assumed were the direct and proximate cause of Claimant's losses;
5. The doctrine of laches bars the claim;
6. All claims asserted against Respondent must be barred because Claimants willfully and intentionally ratified the trades by accepting the confirmations and statements without protest;
7. To the extent that any losses or diminution in value in Claimants' securities may have occurred, such losses were the result of unforeseen market fluctuations and were within the risks assumed;
8. Claimants have failed to compute the alleged damages and seek a windfall;
9. Claimants had a full, complete, accurate and contemporaneous knowledge

- concerning their accounts and, therefore, are precluded and estopped from any recovery;
10. Throughout the period complained of, Claimants received trade confirmations and account statements in a timely fashion, but continued their dealings, constituting a ratification and waiver of any wrongdoing by SGC and precluding recovery;
 11. Claimants expressly ordered, approved, participated in, and ratified the acts and transactions of which they complain in their Claim and are barred from recovery under the doctrine of estoppel;
 12. Claimants did not rely to their detriment on any act by SGC;
 13. Claimants' losses, if any, were proximately caused by their own decisions, conduct, and/or negligence, and are therefore barred in whole or in proportion of their negligence which contributed to their alleged losses;
 14. Claimants' claims are barred as a result of their failure to minimize or mitigate their alleged damages;
 15. Claimants' claims are barred as a result of their failure to exercise due diligence and/or failure to timely disaffirm the transactions and acts complained of despite their knowledge of any wrongdoing;
 16. Any diminution in the value of the Claimants' investments made through SGC was caused, in whole or in part, by the general decline in the investment markets, economy and/or other events outside SGC's control;
 17. Claimants' relationship with SGC is contractual in nature, and therefore, any tort claims for economic loss are barred as a matter of law;
 18. Claimants' claims are barred by the applicable statutes of limitations and/or statutes of repose;
 19. Claimants are not entitled to attorneys' fees or punitive damages;
 20. Claimants are not entitled to recovery against SGC in this arbitration because SGC acted at all times in good faith and exercised reasonable diligence.

RELIEF REQUESTED

Claimants originally requested:

Compensatory Damages	\$1,200,000.00
Punitive Damages	To be determined by panel.
Interest	To be determined by panel.
Attorneys' Fees	Pursuant to statute.
Other Costs	To be determined by panel.
Plus other Monetary/Non-Monetary Relief, if any, that the panel felt was justified.	

Claimants' First Amended Statement of Claim requested:

Compensatory Damages	\$2,600,000.00
Punitive Damages	To be determined by panel.
Interest	To be determined by panel.
Attorneys' Fees	Pursuant to statute.
Other Costs	To be determined by panel.

Plus other Monetary/Non-Monetary Relief, if any, that the panel felt was justified.

Respondent AGE requested that the arbitrators enter an order dismissing Claimants' Statement of Claim in its entirety, awarding AGE its costs and fees associated with the defense of the claim, including reasonable attorneys' fees, and such other and further relief as the panel deemed just and proper.

Respondent Josephthal requested an Award denying all claims in the Statement of Claim, assessing all costs and expenses of the proceeding against Claimants and all such further relief as the Panel deemed just and necessary.

Respondent SGC requested that the claim against it be denied in its entirety and also sought attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

On March 29, 2002, after hearing argument on Respondent SGC's Motion to Dismiss at the pre-hearing held March 26, 2002, the panel determined that it would take no action on the Motion, but hold it in abeyance until such time as SGC determined to reassert the motion. At hearing, Respondent SGC moved for dismissal at the conclusion of Claimants' case. The motion was granted, but its request to recover costs and attorneys' fees was denied.

On August 31, 2002, the panel denied Claimants' Motion to File a Second Amended Statement of Claim.

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. Respondent A.G. Edwards & Sons, Inc. is liable for and shall pay to Claimant William C. Ferrill the sum of \$45,126.00 as compensatory damages, plus interest at the rate of 4.75% per annum accruing from October 1, 2002 until the award is paid in full;
2. In addition, Respondent A.G. Edwards & Sons, Inc. is liable for and shall pay to Claimants John and Joann Vaughan the sum of \$64,829.00 as compensatory damages, plus interest at the rate of 4.75% per annum accruing from October 1, 2002 until the award is paid in full;
3. Furthermore, Respondent A.G. Edwards & Sons, Inc. is liable for and shall pay to Claimants William C. Ferrill, John Vaughn and Joanne Vaughn the sum of \$30,000.00 as costs;
4. Respondent A.G. Edwards & Sons, Inc. is also liable for and shall pay to Claimants William C. Ferrill, John Vaughn and Joanne Vaughn the sum of \$250.00 as reimbursement of one-half the non-refundable filing fee paid by the Claimants;
5. Respondent Josephthal & Co., Inc. is liable for and shall pay to Claimant William

- C. Ferrill the sum of \$15,210.00 as compensatory damages, plus interest at the rate of 4.75% per annum accruing from October 1, 2002 until the award is paid in full;
6. In addition, Respondent Josephthal & Co., Inc. is liable for and shall pay to Claimants John and Joann Vaughan the sum of \$20,098.00 as compensatory damages, plus interest at the rate of 4.75% per annum accruing from October 1, 2002 until the award is paid in full;
 7. Furthermore, Respondent Josephthal & Co., Inc. is liable for and shall pay to Claimants William C. Ferrill, John Vaughn and Joanne Vaughn the sum of \$30,000.00 as costs;
 8. Respondent Josephthal & Co., Inc. is also liable for and shall pay to Claimants William C. Ferrill, John Vaughn and Joanne Vaughn the sum of \$250.00 as reimbursement of one-half the non-refundable filing fee paid by the Claimants;
 9. The claims asserted against Respondent SG Cowen Securities Corp. are dismissed with prejudice;
 10. All remaining costs of arbitration, including any attorneys' fees, shall be borne by the party incurring the cost; and,
 11. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 500.00
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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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, A.G. Edwards & Sons, Inc., Josephthal & Co., Inc. and SG Cowen Securities Corp. are parties to this arbitration and each are assessed the following member fees:

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$	900.00
Pre-hearing conferences: January 17, 2002	1 session	
April 18, 2002	1 session	
Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$	2,400.00
Pre-hearing conferences: November 21, 2001	1 session	
March 26, 2002	1 session	
Eighteen (18) Hearing sessions @ \$1,200.00	=	\$21,600.00
Hearing Dates: May 21, 2002	2 sessions	
May 22, 2002	2 sessions	
May 23, 2002	2 sessions	
May 24, 2002	2 sessions	
September 24, 2002	2 sessions	
September 25, 2002	2 sessions	
September 26, 2002	2 sessions	
September 27, 2002	2 sessions	
September 28, 2002	2 sessions	
Total Forum Fees	=	\$24,900.00

The Panel has assessed \$12,450.00 of the forum fees to Respondent A.G. Edwards & Sons, Inc. and \$12,450.00 of the forum fees to Respondent Josephthal & Co., Inc.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Claimants requested a copy of the tape of the March 26, 2002 pre-hearing = \$ 15.00

FEE SUMMARY

Claimants John Vaughn, Joann Vaughan and William C. Ferrill are jointly and severally liable for:

Initial Filing Fee	= \$	500.00
Administrative Costs	= \$	15.00
Total Fees	= \$	515.00
Less payments	= \$	1,715.00
Refund Due from NASD Dispute Resolution	= \$	1,200.00

Respondent A.G. Edwards & Sons, Inc. is solely liable for:

Member Fees	= \$	7,600.00
Forum Fees	= \$	12,450.00
Total Fees	= \$	20,050.00
Less payments	= \$	7,600.00

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Respondent Josephthal & Co., Inc. is solely liable for:

Member Fees	= \$ 7,600.00
Forum Fees	= \$ 12,450.00
Total Fees	= \$ 20,050.00
Less payments	= \$ 8,800.00
Balance Due NASD Dispute Resolution	= \$ 11,250.00

Respondent SG Cowen Securities Corp. is solely liable for:

Member Fees	= \$ 7,600.00
Less payments	= \$ 8,800.00
Refund Due from NASD Dispute Resolution	= \$ 1,200.00

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

ARBITRATION PANEL

Philip I. McConnell, Esq. - Public Arbitrator, Presiding Chairperson
Sanford D. Sanes - Public Arbitrator
Richard C. Corse - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Philip I. McConnell

Philip I. McConnell, Esq.
Public Arbitrator, Presiding Chairperson

11/02/02
Signature Date

Sanford D. Sanes
Public Arbitrator

Signature Date

Richard C. Corse
Non-Public Arbitrator

Signature Date

11/5/02 Alan
Date of Service (For NASD Dispute Resolution office use only)

Less payments _____ = \$ 7,600.00
Balance Due NASD Dispute Resolution = \$ 12,450.00

Respondent Josephthal & Co., Inc. is solely liable for:

Member Fees _____ = \$ 7,600.00
Forum Fees _____ = \$ 12,450.00
Total Fees _____ = \$ 20,050.00
Less payments _____ = \$ 8,800.00
Balance Due NASD Dispute Resolution = \$ 11,250.00

Respondent SG Cowen Securities Corp. is solely liable for:

Member Fees _____ = \$ 7,600.00
Less payments _____ = \$ 8,800.00
Refund Due from NASD Dispute Resolution = \$ 1,200.00

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

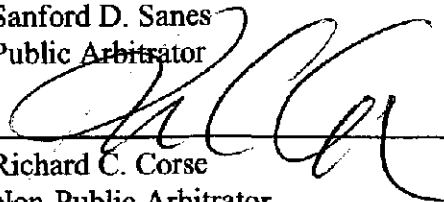
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Philip I. McConnell, Esq. - Public Arbitrator, Presiding Chairperson
Sanford D. Sanes - Public Arbitrator
Richard C. Corse - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Philip I. McConnell, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Sanford D. Sanes
Public Arbitrator


Richard C. Corse
Non-Public Arbitrator

Signature Date

10-31-02
Signature Date

11/5/02 Mm
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
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Balance Due NASD Dispute Resolution = \$ 12,450.00

Respondent Josephthal & Co., Inc. is solely liable for:

Member Fees	= \$ 7,600.00
Forum Fees	= \$ 12,450.00
Total Fees	= \$ 20,050.00
Less payments	= \$ 8,800.00
Balance Due NASD Dispute Resolution	= \$ 11,250.00

Respondent SG Cowen Securities Corp. is solely liable for:

Member Fees	= \$ 7,600.00
Less payments	= \$ 8,800.00
Refund Due from NASD Dispute Resolution	= \$ 1,200.00

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

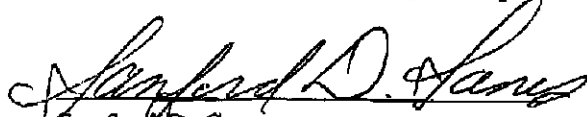
ARBITRATION PANEL

Philip I. McConnell, Esq. - Public Arbitrator, Presiding Chairperson
Sanford D. Sanes - Public Arbitrator
Richard C. Corse - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Philip I. McConnell, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Sanford D. Sanes
Public Arbitrator

Nov. 1, 2002
Signature Date

Richard C. Corse
Non-Public Arbitrator

Signature Date

11/5/02 MM
Date of Service (For NASD Dispute Resolution office use only)