

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

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In the Matter of the Arbitration Between:

Wanda S. Keith, Claimant v. A.G. Edwards & Sons, Inc. and Dalan Madsen, Respondents

Case Number: 01-02401

Hearing Site: Boca Raton, Florida

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**REPRESENTATION OF PARTIES**

For Wanda S. Keith, hereinafter referred to as "Claimant": Thomas H. Buscaglia, Esq., T. H. Buscaglia and Associates, Miami, Florida

For A.G. Edwards & Sons, Inc. ("A.G. Edwards") and Dalan Madsen ("Madsen"), hereinafter collectively referred to as "Respondents": M. Jane Matoesian, Vice President & Counsel, Respondent A.G. Edwards, St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed: May 7, 2001.

Supplement to NASD-DR Claim, filed by Claimant: November 27, 2001.

Claimant's Uniform Submission Agreement signed: April 13, 2001.

Statement of Answer and Motion for More Definite Statement, filed by Respondents: August 3, 2001.

Respondent A.G. Edward's Uniform Submission Agreement signed: August 2, 2001.

Respondent Madsen's Uniform Submission Agreement signed: July 12, 2001.

**CASE SUMMARY**

Claimant alleged the following causes of action: 1) unauthorized trading; 2) unsuitability; 3) excessive trading; 4) breach of fiduciary duty; and 5) fraudulent practice in course of dealing. The causes of action relate to investments in Keystone High Income Fund, Pharmaceutical Growth Trust, Technology Growth Trust, American Leading Brands Growth Trust, Energy Growth Trust, Internet Growth Trust, Bank and Thrift Growth Trust, Real Estate Investment Trust, State Street Trust High Income Fund, Van Kampen American Capital Brand Name Equity Trust, Energy Growth Trust #3; and shares of common stock in Compaq Computer Corporation, Dell Computer Corporation and Oracle Corporation.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested in her Statement of Claim: 1) compensatory damages in the amount of \$100,000.00; and 2) punitive damages in the amount of \$150,000.00. At the evidentiary hearing, Claimant requested: 1) rescission of transactions, including statutory interest, in the amount of \$42,200.00; 2) disgorgement of commissions, including statutory interest, in the amount of \$10,327.91; 3) punitive damages in the amount of \$250,000.00; 4) interest; 5) costs; and 6) a finding as to Claimant's entitlement to an award of attorneys' fees.

Respondents requested: 1) dismissal of the Claimant's Statement of Claim in its entirety; 2) costs; 3) attorneys' fees; 4) an order that all references to the above-captioned arbitration proceeding be expunged from Respondent Madsen's permanent records with the Central Registration Depository; and 5) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

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

On or about November 16, 2001, the Panel entered its Order on Respondents' Motion for More Definite Statement. The Panel granted Respondents' motion and ordered Claimant to file a supplemental pleading more clearly identifying the transactions by name and date that form the basis for the allegation that the account was churned, investments were unsuitable, transactions were unauthorized, and a portion of the transactions that were for "no apparent reason other than his 'front end' commission". The Panel ordered Claimant to file the supplemental pleading within ten days of the date that NASD Dispute Resolution distributed its Order. On November 19, 2001, NASD Dispute Resolution distributed the Order to the parties.

At the evidentiary hearing, Claimant made her ore tenus motions to strike objection to Exhibit #8 in Claimant's binder #1, the summary of telephone calls, and to strike objection to all testimony from Respondent Madsen concerning incoming telephone calls at Respondent A.G. Edwards from Claimant. The Panel denied Claimant's motions.

On or about March 29, 2002, Claimant filed her post-hearing, renewed motions to strike objection to Exhibit #8 in Claimant's binder #1, the summary of telephone calls, and to strike objection to all testimony from Respondent Madsen concerning incoming telephone calls at Respondent A.G. Edwards from Claimant. On or about April 11, 2002, Respondents filed their Reply to Claimant's Renewed Motion to Strike Objection to Exhibit No. 8 wherein Respondents requested the Panel to overrule Claimant's motion. On April 12, 2002, Claimant filed her Response to Respondent's Reply and Claimant's Renewed Objection and Motion to Strike. The

Panel denied Claimant's motions.

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, and the post-hearing submissions (if any), the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Madsen's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Madsen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) All other relief requested, including requests for attorneys' fees, and not expressly granted is denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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:

The Panel has determined to waive the assessment of the \$300.00 initial claim filing fee.

#### **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 firm, Respondent A.G. Edwards, is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
Total Member Fees	= \$ 4,600.00

### **Adjournment Fees**

The following adjournment fees are assessed:

There were no adjournments requested during these proceedings.

### **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 a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: February 28, 2002 1 session	
(1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: December 4, 2001 1 session	
(3) Hearing sessions @ \$1,125.00/session	= \$3,375.00
Hearings: March 27, 2002 2 sessions	
March 28, 2002 1 session	

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<b>Total Forum Fees</b>	<b>= \$4,950.00</b>
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The Panel assessed \$2,475.00 of the forum fees to Claimant.

The Panel assessed \$2,475.00 of the forum fees to Respondent A.G. Edwards.

### **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 sundry other requests.

There were no administrative costs incurred during these proceedings.

### **Fee Summary**

Claimant is charged with the following fees and costs:

Forum Fees	= \$2,475.00
Total Fees	= \$2,475.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,475.00

Respondent A.G. Edwards is charged with the following fees and costs:

Member Fees	= \$4,600.00
Forum Fees	= \$2,475.00
Total Fees	= \$7,075.00
Less payments	= \$4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,475.00

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

**ARBITRATION PANEL**

<i>James W. Geiger</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Kenneth M. Felder</i>	-	<i>Public Arbitrator</i>
<i>David L. Giertz</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
/s/  
James W. Geiger  
Chair, Public Arbitrator

\_\_\_\_\_  
April 17, 2002  
Signature Date

\_\_\_\_\_  
/s/  
Kenneth M. Felder  
Public Arbitrator

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April 18, 2002  
Signature Date

\_\_\_\_\_  
/s/  
David L. Giertz  
Non-Public Arbitrator

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April 20, 2002  
Signature Date

\_\_\_\_\_  
April 23, 2002  
Date of Service

Respondent A.G. Edwards is charged with the following fees and costs:

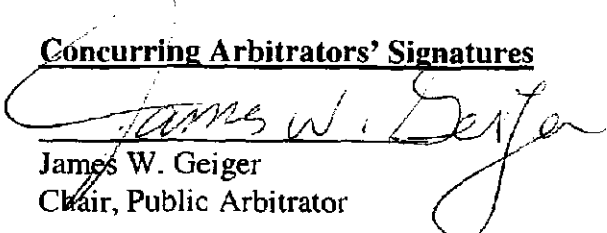
Member Fees	= \$4,600.00
Forum Fees	= \$2,475.00
Total Fees	= \$7,075.00
Less payments	= \$4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,475.00

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

**ARBITRATION PANEL**

James W. Geiger	-	Public Arbitrator, Presiding Chair
Kenneth M. Felder	-	Public Arbitrator
David L. Giertz	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
James W. Geiger  
Chair, Public Arbitrator

April 17, 2002  
Signature Date

\_\_\_\_\_  
Kenneth M. Felder  
Public Arbitrator

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

\_\_\_\_\_  
David L. Giertz  
Non-Public Arbitrator

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

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

Respondent A.G. Edwards is charged with the following fees and costs:

Member Fees	= \$4,600.00
Forum Fees	= \$2,475.00
Total Fees	= \$7,075.00
Less payments	= \$4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,475.00

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


**ARBITRATION PANEL**

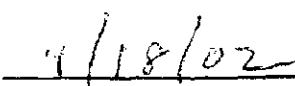
<i>James W. Geiger</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Kenneth M. Felder</i>	-	<i>Public Arbitrator</i>
<i>David L. Giertz</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
James W. Geiger  
Chair, Public Arbitrator

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

  
\_\_\_\_\_  
Kenneth M. Felder  
Public Arbitrator

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

\_\_\_\_\_  
David L. Giertz  
Non-Public Arbitrator

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

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

Respondent A.G. Edwards is charged with the following fees and costs:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	<u>= \$2,475.00</u>
Total Fees	= \$7,075.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,475.00

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

**ARBITRATION PANEL**

<u>James W. Geiger</u>	-	Public Arbitrator, Presiding Chair
<u>Kenneth M. Felder</u>	-	Public Arbitrator
<u>David L. Giertz</u>	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

James W. Geiger  
Chair, Public Arbitrator

Signature Date

Kenneth M. Felder  
Public Arbitrator

Signature Date

David L. Giertz  
Non-Public Arbitrator

Signature Date

3/27-3/28/02  
Date of Service