

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

A. G. Edwards & Sons, Inc., (Claimant) vs. Gary A. Greenberg, (Respondent)

Case Number: 01-03037

Hearing Site: Buffalo, New York

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**REPRESENTATION OF PARTIES**

Claimant, A. G. Edwards & Sons, Inc., hereinafter referred to as "Claimant": Nuviah Shirazi, Esq. A. G. Edwards & Sons, Inc., St. Louis, MO.

Respondent, Gary A. Greenberg, hereinafter referred to as "Respondent": Peter H. Abdella, Esq., Harter, Secrest & Emery LLP, Rochester, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: June 7, 2001.

Claimant signed the Uniform Submission Agreement: June 6, 2001.

Statement of Answer filed by Respondent on or about August 10, 2001.

Respondent signed the Uniform Submission Agreement: August 10, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: Respondent must indemnify Claimant for actions taken by Respondent during his employment with Claimant that created a liability for Claimant in the amount of \$62,500.00, representing a customer settlement.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: he was never notified by Claimant that a formal complaint for payment was made by a customer against the firm nor was he notified by Claimant of its intention to settle the customer's complaint; purported indemnification or hold harmless agreement should not be enforced here because it is included in an adhesion contract; the indemnification or hold harmless agreement is also unenforceable in this case because a number of other parties, including Claimant, are responsible for any losses which occurred; the indemnification or hold harmless agreement should only be enforceable for legitimate and actual damages that have been sustained by Claimant; Claimant failed to mitigate its losses; and upon information and belief, there should have been insurance coverage available to cover any alleged losses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the sum of \$62,500.00, plus costs and any other relief the Panel deems appropriate.

Respondent requested that Claimant's claim be dismissed in its entirety, and recovery of such other and further relief as the Panel may deem appropriate.

### **OTHER ISSUES CONSIDERED AND 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.

### **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 is liable and shall pay to the Claimant the sum of \$5,000.00 as compensatory damages.
2. All other requests for relief are hereby 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	= \$1,000.00
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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 firm that employed the associated person at the time of the event giving rise to the dispute. In this matter, the member firm is A. G. Edwards & Sons, Inc. is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

**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 sessions with Panel x \$750.00	= \$ 750.00
Pre-hearing conference(s): March 25, 2002      1 session	
Four (4) Hearing sessions x \$750.00	= \$3,000.00
Hearing Dates:                      October 10, 2002      2 sessions	
October 11, 2002      2 sessions	
Total Forum Fees	= \$3,750.00

1. The Panel has assessed \$1,875.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,875.00 of the forum fees against Respondent.

**Fee Summary**

1. Claimant is solely liable for:	
Initial Filing Fee	= \$1,000.00
Member Fees	= \$3,100.00
Forum Fees	= \$1,875.00
Total Fees	= \$5,975.00
Less payments	= \$4,850.00
Balance Due NASD Dispute Resolution	= \$1,125.00

2. Respondent is solely liable for:

<u>Forum Fees</u>	= \$1,875.00
<u>Total Fees</u>	= \$1,875.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$1,875.00

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

**ARBITRATION PANEL**

Jeffrey Mark Schwartz	-	Non-Public Arbitrator, Presiding Chair
Judy M. LiPuma	-	Non-Public Arbitrator
Steven C. Bender, CPA	-	Non-Public 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.

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Jeffrey Mark Schwartz  
Non-Public Arbitrator, Presiding Chair

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Signature Date

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Judy M. LiPuma  
Non-Public Arbitrator

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11-13-02  
Signature Date

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Steven C. Bender, CPA  
Non-Public Arbitrator

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Signature Date

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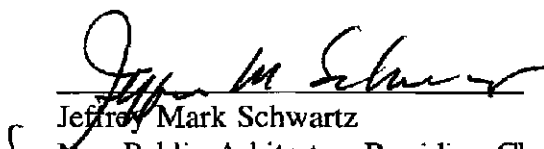
November 21, 2002  
Date of Service (For NASD Dispute Resolution use only)

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Jeffrey Mark Schwartz  
Non-Public Arbitrator, Presiding Chair

11/17/02  
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Signature Date

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Judy M. LiPuma  
Non-Public Arbitrator

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

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Steven C. Bender, CPA  
Non-Public Arbitrator

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Signature Date

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Non-Public Arbitrator, Presiding Chair

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Signature Date

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Judy M. LiPuma  
Non-Public Arbitrator

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Signature Date

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*Steven C. Bender, CPA*  
Steven C. Bender, CPA  
Non-Public Arbitrator

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11-12-02  
Signature Date

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November 21, 2002  
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