

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Charles Schwab & Co., Inc., (Claimant) vs. A.G. Edwards & Sons, Inc. and Raymond E. Cloutier, Jr., (Respondents)

Case Number: 01-03147

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant, Charles Schwab & Co., Inc., hereinafter referred to as "Claimant": David P. Eby, Esq., Devine, Millimet & Branch, Manchester, NH.

Respondents, A.G. Edwards & Sons, Inc. ("Edwards") and Raymond E. Cloutier, Jr. ("Cloutier"), hereinafter collectively referred to as "Respondents": Charles W. Grau, Esq., Upton, Sanders & Smith, LLP, Concord, NH.

CASE INFORMATION

Statement of Claim filed on or about: June 13, 2001.

Claimant signed the Uniform Submission Agreement: June 13, 2001.

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

Edwards did not sign a Uniform Submission Agreement.

Cloutier did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; misappropriation of trade secrets; breach of fiduciary duty; intentional interference with advantageous business relations; conversion; and unfair trade practices in violation of the New Hampshire Consumer Protection Act.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Cloutier is complying with the Confidentiality Agreement of his contract; any damages suffered by Claimant are *de minimis*; neither Cloutier nor Edwards is in possession of any trade secrets of Claimant; exemplary damages are not appropriate in this case; Cloutier is not in breach of any fiduciary duty owed to Claimant; neither Cloutier nor Edwards is engaging in any conduct that unfairly competes

with Claimant, or interferes with any contractual relationship between Claimant and its customers, except as they are privileged to do as Claimant's competitors; Respondents have not retained any of Claimant's confidential information, therefore they are not engaged in conversion of Claimant's property; and Respondents are not engaged in any conduct that constitutes an unfair or deceptive trade practice in violation of the New Hampshire Consumer Protection Act.

RELIEF REQUESTED

Claimant requested that the Panel:

- a. Award damages to Claimant in an amount sufficient to compensate Claimant for the business diverted and to be diverted in the future through Respondents' wrongful misappropriations, solicitations, unfair competition, breaches of fiduciary duty, and interference, as proven at a hearing on this matter;
- b. Issue a permanent injunction to compel Respondents, and everyone acting in concert with them, to refrain from such misappropriations, or threatened misappropriations of Claimant's trade secrets, to return any and all records, documents, and other personal property removed from the premises of Claimant's business offices, and to compel Respondents, and everyone acting in concert with them, to refrain from contacting and soliciting the business of any customers or perspective customers whose identities became known to them as a result of the employment of Cloutier at Claimant firm;
- c. Award punitive and exemplary damages in an amount to deter Respondents' wrongful conduct and willful and wanton disregard of Claimant's rights; and
- d. Award Claimant such other and further relief as the Panel deems just and proper, including attorneys' fees and Claimant's arbitration-related costs and expenses.

Respondents requested that the Panel deny Claimant's requests for injunctive relief, exemplary damages, costs, and attorneys' fees, and find that the only possibly appropriate remedy for Claimant is damages measured by the amount of commissions lost by Cloutier's written solicitation of customers.

OTHER ISSUES CONSIDERED AND DECIDED

Edwards and Cloutier did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, are 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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The injunction issued by the United States District Court for the District of New Hampshire shall remain in place until April 1, 2002. Therefore, Edwards and Cloutier are restrained from the following activities until April 1, 2002:
 - a. Accepting any business or account transfers from any of Claimant's clients who have been solicited or contacted by Respondents for the purpose of obtaining business, except that Respondents may continue to service any of Claimant's clients who were also clients of Edwards prior to Cloutier's resignation from Claimant;
 - b. Using, transmitting, or otherwise disclosing, directly or indirectly, any of Claimant's confidential and proprietary information that Cloutier transferred to Edwards; and
 - c. Destroying or altering any information or materials relating to the facts at issue in this case.
2. Respondents be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$57,000.00 as attorneys' fees. The Panel awarded attorneys' fees pursuant to the New Hampshire Trade Secrets Act, RSA Sec. 350-B, as argued in Claimant's Statement of Claim.
3. 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
Injunctive Relief fee	= \$2,500.00

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. In this matter, Charles Schwab & Co., Inc. and A.G. Edwards & Sons, Inc. are parties.

Charles Schwab & Co., Inc.

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,000.00

A.G. Edwards & Sons, Inc.

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,000.00

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:

Two (2) Hearing sessions x \$1,000.00	= \$2,000.00
Hearing Date: August 29, 2001	2 sessions
Total Forum Fees	= \$2,000.00

1. The Panel has assessed \$1,000.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,000.00 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
Injunctive Relief Fee	= \$2,500.00
Member Fees	= \$3,800.00
<u>Forum Fees</u>	<u>= \$1,000.00</u>
Total Fees	= \$7,800.00
<u>Less payments</u>	<u>= \$7,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

2. Edwards be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$3,800.00</u>
Total Fees	= \$3,800.00
<u>Less payments</u>	<u>= \$3,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

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


<u>Forum Fees</u>	<u>= \$1,000.00</u>
Total Fees	= \$1,000.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,000.00

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

ARBITRATION PANEL

Theodore H. O'Brien, Esq.	-	Public Arbitrator, Presiding Chair
Harold Rubin	-	Public Arbitrator
Theodore R. Turner, Jr.	-	Industry Arbitrator

Concurring Arbitrators' Signatures



Theodore H. O'Brien, Esq.
Public Arbitrator, Presiding Chair

11/1/01

Signature Date

Harold Rubin
Public Arbitrator

Signature Date

Theodore R. Turner, Jr.
Industry Arbitrator

Signature Date

November 13, 2001
Date of Service (For NASD office use only)


ARBITRATION PANEL

Theodore H. O'Brien, Esq.	-	Public Arbitrator, Presiding Chair
Harold Rubin	-	Public Arbitrator
Theodore R. Turner, Jr.	-	Industry Arbitrator

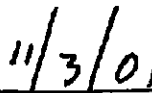
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Public Arbitrator, Presiding Chair

Signature Date



Harold Rubin
Public Arbitrator



Signature Date

Theodore R. Turner, Jr.
Industry Arbitrator

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Public Arbitrator, Presiding Chair

Signature Date

Harold Rubin
Public Arbitrator

Signature Date



Theodore R. Turner, Jr.
Industry Arbitrator

11-2-01

Signature Date

November 13, 2001

Date of Service (For NASD office use only)