

Award NASD

In the Matter of the Arbitration Between:

Suzanne J. Englemann, Claimant v. A.G. Edwards & Sons, Inc., Larry Bernstein, and Keith Epstein, Respondents

Case Number: 02-00225

Hearing Site: Boca Raton, Florida

REPRESENTATION OF PARTIES

For Suzanne J. Englemann, hereinafter referred to as "Claimant": Charles L. Pickett, Jr., Esq., Boose Casey Ciklin Lubitz Martens McBane & O'Connell, West Palm Beach, FL.

For A.G. Edwards & Sons, Inc. ("AG"), Larry Bernstein ("Bernstein"), and Keith Epstein ("Epstein"), hereinafter referred to as "Respondents": Nuviah Shirazi, Litigation Counsel, AG, St. Louis, MO.

CASE INFORMATION

Statement of Claim filed on or about: January 8, 2002.

Amended Statement of Claim filed on or about: January 23, 2002.

Claimant's Uniform Submission Agreement signed: December 12, 2001.

Respondents' Answer filed on or about: March 27, 2002.

Respondents' Amended Answer filed on or about: May 16, 2002.

Respondent AG's Uniform Submission Agreement signed: March 15, 2002.

Respondent Bernstein's Uniform Submission Agreement signed: February 28, 2002.

Respondent Epstein's Uniform Submission Agreement signed: February 28, 2002.

CASE SUMMARY

Claimant alleged the following causes of action: 1) misrepresentation; 2) unsuitability; 3) negligence; 4) fraud; 5) breach of fiduciary duty; 6) negligent supervision/respondeat superior; 7) omission of facts; and 8) unauthorized trading. The causes of action relate to the purchase of common stock of Lucent Technologies, Inc. in Claimant's AG account.

Unless specifically admitted in their Statement of Answer and Amended Answer, Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested in her Statement of Claim: 1) rescission in the amount of \$30,309.07 with assignment of the Lucent stock to Respondents, or in the alternative, damages equal to the cost at purchase minus current value of the Lucent stock, with Claimant retaining ownership of the Lucent stock; 2) punitive damages against Respondents Bernstein and Epstein in the amount of \$10,000.00; 3) reimbursement of forum fees and costs; 4) interest at an annual rate of 10% from September 7, 2000 to December 31, 2000 and 11% thereafter through the date of the award; and 5) such other relief as the panel deemed just and proper.

Respondents requested: 1) dismissal of the Statement of Claim with prejudice; 2) costs; 3) attorneys' fees; and 3) such other relief as the panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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 has decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Statement of Claim is dismissed, with prejudice.
- 2) Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration (the "Code"), the following fees are assessed:

Filing Fees

NASD received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$	175.00
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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 that gave rise to the dispute, claim, or controversy. Respondent AG is a party to this dispute and was an NASD member at the time the following fees were assessed:

Member Surcharge	= \$	875.00
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Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 1,000.00
Total Member Fees	= \$ 2,625.00

Adjournment Fees

The following adjournment fees are assessed:

December 16, 2002, adjournment requested by Respondents	= \$ 600.00
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The Panel waived the adjournment fee of \$600.00.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the arbitrator.

Injunctive relief fees were not 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:

One (1) Pre-hearing conference with the Panel @ \$600.00	= \$ 600.00
Pre-hearing conference: August 21, 2002 1 session	
Four (4) Hearing sessions with the Panel @ \$600.00	= \$ 2,400.00
Hearing: December 18, 2002 2 sessions	
December 19, 2002 2 sessions	
Total Forum Fees	= \$ 3,000.00

The Panel assessed the total forum fees of \$3,000.00 to Respondent AG.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for the following fees and costs:

Initial Filing Fee	= \$	175.00
Total Fees	= \$	175.00
Less payments	= \$	175.00
Balance Due NASD	= \$	0.00

Respondent AG is solely liable for the following fees and costs:

Forum Fees	= \$	3,000.00
<u>Member Fees</u>	= \$	2,625.00
Total Fees	= \$	5,625.00
<u>Less payments</u>	= \$	1,625.00
Balance Due NASD	= \$	4,000.00

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

ARBITRATION PANEL

<i>Myron E. Levinson</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Sheldon Glassberg, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Bernard A. D'Amour</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Myron E. Levinson
Chair, Public Arbitrator

Signature Date

/s/
Sheldon Glassberg, Esq.
Public Arbitrator

Signature Date

/s/
Bernard A. D'Amour
Non-Public Arbitrator

Signature Date

January 21, 2003
Date of Service (For NASD office use only)

NASD

Arbitration No. 02-00225

Award Page 4 of 4

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Concurring Arbitrators' Signatures



Myron E. Levinson
Chair, Public Arbitrator

1/19/07
Signature Date

Sheldon Glassberg, Esq.
Public Arbitrator

Signature Date

Bernard A. D'Amour
Non-Public Arbitrator

Signature Date

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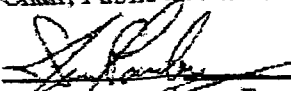
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<i>Bernard A. D'Amour</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Myron E. Levinson
Chair, Public Arbitrator



Sheldon Glassberg, Esq.
Public Arbitrator

Signature Date

1-10-03
Signature Date

Bernard A. D'Amour
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD
Arbitration No. 02-00225
Award Page 4 of 4

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<i>Bernard A. D'Amour</i>	•	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Myron E. Levinson
Chair, Public Arbitrator

Signature Date

Sheldon Glassberg, Esq.
Public Arbitrator

Signature Date



Bernard A. D'Amour
Non-Public Arbitrator

1/9/03

Signature Date

Date of Service (For NASD office use only)