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

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In the Matter of the Arbitration Between:

Name of the Claimants  
Russell and Doris Elliott

Case Number: 02-04821

Name of the Respondents  
A.G. Edwards & Sons, Inc.  
and Gregory S. Allen

Hearing Site: St. Louis, Missouri

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**REPRESENTATION OF PARTIES**

Steven W. Koslovsky, Esq. formerly of the firm Blumenfeld, Kaplan & Sandweiss, P.C., now with the Law Offices of Steven Koslovsky located in Maryland Heights, Missouri, represented Claimants Russell and Doris Elliott, hereinafter collectively as "Claimants."

Michael Naccarto, Esq. of A.G. Edwards & Sons, Inc. located in St. Louis, Missouri represented Respondents, A.G. Edwards & Sons, Inc. ("Edwards") and Gregory S. Allen ("Allen"), hereinafter collectively as "Respondents."

**CASE INFORMATION**

Statement of Claim filed on August 16, 2002.

Claimants Russell and Doris Elliott jointly signed a Uniform Submission Agreement on August 8, 2002.

Statement of Answer filed by Respondents, Edwards and Allen, on or about October 25, 2003.

Respondent Edwards signed a Uniform Submission Agreement on October 14, 2002.

Respondent Allen did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: fraud, negligence, suitability and failure to supervise. The causes of action relate to a variable annuity investment offered by Allstate. Claimants alleged that Respondents committed fraud by misrepresenting and concealing material information about the investment from Claimants. Furthermore, said investment was clearly unsuitable and did not meet Claimant's needs and objectives.

Unless specifically admitted in its Answer, Respondents Edwards and Allen denied the allegations made in the Statement of Claim and asserted the following affirmative defenses:

1. Claimants signed an agreement to notify Edwards in a timely manner of any discrepancies or complaints in connection with their accounts in a timely manner. Claimants did not notify

Respondents, therefore, are barred from recovering from Edwards under this agreement and the Illinois Uniform Commercial Code.

2. Because Claimants failed to comply with their agreements with Edwards, any losses regarding the transactions are to be borne by them. Claimants' failure to timely object to the transactions is deemed ratification, waiver and estoppel of Claimants' right to recovery.
3. All of the transactions in Claimants' accounts were executed with express authorization of Claimants.
4. Claimants failed to act promptly and with due diligence to mitigate their alleged damages after Claimants knew or should have known of the alleged acts of which they now complain.
5. By failing to exercise the degree of care over their affairs and investments, Claimants caused or contributed to cause the alleged damages of which they now complain and are thus barred by their own contributory negligence and/or comparative fault from recovering damages.
6. To the extent Claimants are seeking recovery of attorney's fees and interest, such request fails to state a claim for which relief may be granted, as there is no legal basis for recovery of same.
7. Claimants' cause of action fails to state a claim for which relief may be granted.
8. Claimants were aware of the risks of profits and losses associated with investing in securities and voluntarily assumed such risks.
9. The damages allegedly suffered were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in Claimants' accounts for which Respondents are not liable or responsible.
10. Claimants' claims are barred by all applicable state and federal statutes of limitations.
11. Claimants have waived and/or are estopped to assert claims against Edwards by virtue of their conduct in dealing with Edwards.

#### **RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$100,000.00
Punitive Damages	\$400,000.00
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	

Respondents Edwards and Allen request an order dismissing all claims with prejudice, expunging all references of this arbitration from Allen's record with CRD, for all costs and expenses incurred herein, and for such other relief as the Panel deem appropriate.

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

Respondent Allen did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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, 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. Any and all claims asserted by Claimants Russell Elliott and Doris Elliott are denied.
2. Parties shall bear their own costs, including attorneys' fees, except as specified herein.
3. Any and all other relief not specifically addressed herein, including punitive damages, are 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 = \$ 300.00

#### 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 events giving rise to the dispute. Accordingly, A.G. Edwards & Sons, Inc. is a party and is assessed the following fees:

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

#### Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 session with Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference: May 22, 2003 1 session

Three (3) Hearing sessions @ \$1,125.00 = \$3,375.00

Hearing Date: September 30, 2003 3 sessions

Total Forum Fees = \$4,500.00

1. The Panel has assessed \$4,500.00 of the forum fees jointly to Claimants Russell Elliott and Doris Elliott.

Fee Summary

1. Claimants, Russell Elliott and Doris Elliott, are jointly liable for:	
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$4,500.00
Total Fees	= \$4,800.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$3,375.00
2. Respondent, A.G. Edwards & Sons, Inc. is solely liable for:	
Member Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Mark R. Lee	-	Public, Presiding Chairperson
Richard L. Puhl	-	Public Arbitrator
Richard D. Link	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Mark R. Lee

Mark R. Lee  
Public Arbitrator, Presiding Chairperson

Oct. 28, 2003  
Signature Date

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Richard L. Puhl  
Public Arbitrator

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

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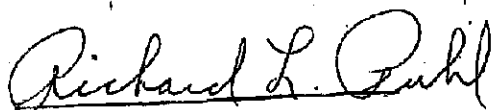
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