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

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 02-04832

Robert Barry Harvey, William F. Harvey, Sr.,  
Jackie Majors, Ann Majors,  
Cheryl Mobley, Jerry Mobley,  
Karen Rowe, Tim Rowe,  
Benjamin Mobley, Elizabeth Mobley, and  
Katie Rowe

Names of the Respondents

Hearing Site: New Orleans, Louisiana

A.G. Edwards & Sons, Inc.  
Hance "Butch" McKenzie, Jr.

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Robert Barry Harvey, William F. Harvey, Sr., Jackie Majors, Ann Majors, Cheryl Mobley, Jerry Mobley, Karen Rowe, Tim Rowe, Benjamin Mobley, Elizabeth Mobley, and Katie Rowe, hereinafter collectively referred to as "Claimants": Steven J. Gard, Esq. and Brian N. Smiley, Esq., Gard Smiley Bishop & Dovin, LLP, Atlanta, Georgia.

For A.G. Edwards & Sons, Inc. ("Edwards"), and Hance "Butch" McKenzie, Jr. ("McKenzie"), hereinafter collectively referred to as "Respondents": Jeffrey Kalinowski, Esq. and Richard H. Kuhlman, Esq., Blackwell Sanders Peper Martin, LLP, St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: August 15, 2002.

Claimants signed the Uniform Submission Agreement: August 13, 2002.

Statement of Answer filed by Respondents on or about: November 4, 2002.

First Amended Statement of Answer filed by Respondents on or about: November 18, 2002.

Respondent McKenzie signed the Uniform Submission Agreement: December 4, 2002.

Respondent Edwards signed the Uniform Submission Agreement: December 11, 2002.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; fraud; negligent misrepresentation; negligence; breach of contract; negligence per se; and violations of the Mississippi Securities Act. The causes of action relate to purchases of shares of stock of Friede Goldman Halter, Inc. and WorldCom in Claimants' accounts.

Unless specifically admitted in their Answer, Respondents denied each and every allegation.

Further, Respondents asserted the following additional affirmative defenses: Claimants' Statement of Claim fails to state a claim upon which relief can be granted; Claimants' claims are barred by the applicable statute of limitations; Claimants' claims are barred by reason of the fact that to the extent Claimants sustained any loss or injury, which Respondents deny, such loss or injury was caused by the acts or omissions of third parties over which Respondents had no control; Claimants' claims are barred by the doctrines of waiver, estoppel, acquiescence, ratification and laches; Claimants knew, or should have known, or otherwise had access to information regarding their respective investments and the status of their respective accounts and did not object to the transactions in their accounts; Claimants, in fact, ratified the transactions in their accounts; Claimants' claims are barred by the doctrine of unclean hands; Claimants received account statements and confirmations and did not object to the transactions in their accounts; therefore, Claimants' claims are barred; the Statute of Frauds bars Claimants' claims; the doctrines of lack of consideration and failure of consideration bar Claimants' claims; Claimants failed to mitigate their damages, if any; Claimants' claims are barred as a direct and proximate result of the negligence and/or fault of Claimants; Claimants' claims are barred by virtue of the terms and conditions of the agreements Claimants entered into with Respondents; Claimants failed to exercise due diligence in connection with making the investments complained of in the Statement of Claim; Claimants' claims for damages, if any, are barred by reason of the fact that Claimants' losses, if any, were a result of a "second investment decision" by Claimants; and Claimants' claim for punitive damages is barred since any award of punitive damages would violate Respondents' constitutional rights under the due process clause of the Fourteenth Amendment and the excessive penalties clause of the Eighth Amendment of the United States Constitution.

#### **RELIEF REQUESTED**

Claimants requested compensatory damages in excess of \$4,000,000.00, punitive damages of \$10,000,000.00, interest at the rate of 8% pursuant to Mississippi Code Annotated §75-71-717(a), costs, attorneys' fees, expert fees, arbitration fees, and such other relief as the undersigned arbitrators (the "Panel") deemed necessary and proper.

Respondents requested dismissal of the Statement of Claim, with prejudice, attorneys' fees, costs, and such other and further relief as the Panel deemed just and proper under the circumstances.

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

On or about January 21, 2004, the parties advised NASD Dispute Resolution ("NASD") that they had settled this matter and requested that the Panel enter an award recommending expungement of all references to the above-referenced arbitration from the NASD Central Registration Depository ("CRD") records of Respondent McKenzie.

On or about February 9, 2004, the parties filed a Motion to Enter Stipulated Award and Order of Expungement (the "Motion and Order"). Claimants stipulated that they did not oppose entry of the Stipulated Award.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

After considering the Pleadings and the Motion and Order, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims, each and all, against Respondents Edwards and McKenzie are dismissed, with prejudice.

The parties shall bear their own costs and expenses incurred in this matter, provided that any fees hereinafter imposed by NASD shall be the responsibility of Respondents.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent McKenzie's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent McKenzie must obtain (at Respondents' own cost) confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all relief not specifically enumerated, including but not limited to requests for interest, punitive damages, and attorneys' fees, are hereby dismissed, with prejudice.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 600.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent Edwards is a member firm and a party.

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were granted during these proceedings for which fees were assessed.

**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 Panel.

No injunctive relief fees were assessed during these proceedings.

**Forum Fees and Assessments**

The Panel assesses forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less.

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: January 9, 2004 1 session	
January 12, 2004 1 session	
One (1) Pre-hearing session with the full Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: April 29, 2003 1 session	
Total Forum Fees	= \$ 2,100.00

Pursuant to the agreement of the parties, the Panel has assessed \$1,050.00 of the forum fees jointly and severally to Claimants, and \$1,050.00 of the forum fees jointly and severally to Respondents.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Retained Initial Hearing Session Deposit	= \$ 150.00
Forum Fees	= \$ 1,050.00
Total Fees	= \$ 1,800.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Edwards is solely liable for:

Member Fees	= \$10,000.00
Total Fees	= \$10,000.00
Less payments	= \$10,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

**Respondents are jointly and severally liable for:**

Forum Fees	= \$ 1,050.00
Total Fees	= \$ 1,050.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,050.00

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

**ARBITRATION PANEL**

Cynthia Lee Traina - Public Arbitrator, Presiding Chairperson  
Linda A. Liljedahl, Esq. - Public Arbitrator  
Charles A. Bosworth, III - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Cynthia Lee Traina  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/  
Linda A. Liljedahl, Esq.  
Public Arbitrator

**Signature Date**

/s/  
Charles A. Bosworth, III  
Non-Public Arbitrator

Signature Date

March 26, 2004  
Date of Service (For NASD Dispute Resolution office use only)



MAR. 25. 2004 10:12AM NASD BOCA RATON

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NASD Dispute Resolution

Arbitration No. 02-04832

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Respondents are jointly and severally liable for:

Forum Fees	= \$ 1,050.00
Total Fees	= \$ 1,050.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,050.00

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**ARBITRATION PANEL**

Cynthia Lee Traina	-	Public Arbitrator, Presiding Chairperson
Linda A. Liljedahl, Esq.	-	Public Arbitrator
Charles A. Bosworth, III	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Cynthia Lee Traina  
Public Arbitrator, Presiding Chairperson

3/19/04  
Signature Date

Linda A. Liljedahl, Esq.  
Public Arbitrator

Signature Date

Charles A. Bosworth, III  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

FROM :

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MAR 19 2004 2:41PM NASD BOCA RATON

Mar. 19 2004 10:29PM P2  
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NASD Dispute Resolution

Arbitration No. 02-04832

Stipulated Award Page 5 of 5

Respondents are jointly and severally liable for:

Forum Fees	= \$ 1,050.00
Total Fees	= \$ 1,050.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,050.00

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ARBITRATION PANEL

Cynthia Lee Traina

Linda A. Liljedahl, Esq.

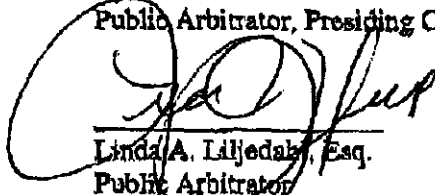
Charles A. Bosworth, III

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Cynthia Lee Traina

Public Arbitrator, Presiding Chairperson



Linda A. Liljedahl, Esq.  
Public Arbitrator

Signature Date

19 March 2004

Signature Date

Charles A. Bosworth, III

Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

MAR. 19. 2004 2:43PM NASD BOCA RATON

NO. 656 P. 6

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Arbitration No. 02-04832

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Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 1,050.00
<u>Total Fees</u>	= \$ 1,050.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,050.00

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

ARBITRATION PANEL

Cynthia Lee Traina	-	Public Arbitrator, Presiding Chairperson
Linda A. Liljedahl, Esq.	-	Public Arbitrator
Charles A. Bosworth, III	-	Non-Public Arbitrator

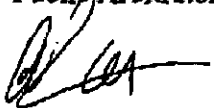
Concurring Arbitrators' Signatures

Cynthia Lee Traina  
Public Arbitrator, Presiding Chairperson

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

Linda A. Liljedahl, Esq.  
Public Arbitrator

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

  
Charles A. Bosworth, III  
Non-Public Arbitrator

8/22/04  
Signature Date

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Date of Service (For NASD Dispute Resolution office use only)