

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

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In the Matter of the Arbitration Between:

Name of the Claimants

Preston J. Valentino and Pamela L. Valentino

Case Number: 02-05032

Name of the Respondents

A.G. Edwards & Sons, Inc. and Don Steriovsky

Hearing Site: Chicago, Illinois

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Type of Controversy: Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Claimants Preston J. Valentino and Pamela L. Valentino was represented by William F. Fitzpatrick, Esq. of the firm Callahan Fitzpatrick & LaKoma with offices located in Oak Lawn, Illinois.

Respondents A.G. Edwards & Sons, Inc. ("A.G. Edwards") and Don Steriovsky ("Steriovsky"), hereinafter collectively referred to as "Respondents" were represented by Clay L. Grumke, Esq. in-house counsel for A.G. Edwards and Sons, Inc. located in St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: August 27, 2002.

Claimant Valentino signed the Uniform Submission Agreement: August 19, 2002.

Joint Statement of Answer filed by Respondents on or about: October 22, 2002.

Respondent A.G. Edwards signed the Uniform Submission Agreement: October 18, 2002.

Respondent Steriovski signed the Uniform Submission Agreement: October 17, 2002.

**CASE SUMMARY**

Claimants Valentino asserted the following causes of action: Unsuitability, misrepresentations, omissions, violation of section 2310 of the NASD Rules of Conduct, breach of fiduciary duty, *respondeat superior*; negligence and negligent supervision.

The causes of action relate to investments shares of SED International Holdings and the Valentino's Annuity Account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

- The Statement of Claim fails to state a claim upon which relief can be granted because there is no legal basis to set out for any recovery;

- Claimants are barred from recovering under the doctrines of ratification, account stated, estoppel, waiver, and laches;
- Claimants knowingly and voluntarily assumed the risk, which was the sole and proximate cause of any alleged damages;
- Claimants ratified the alleged conduct about which Claimants complain;
- Claimants' statement of Claim fails to state a claim upon which relief can be granted because there is no private cause of action for alleged violation of industry rules and regulations;
- Claimants are barred from recovering pursuant to their Customer Agreement and under Section 8-319 of the Uniform Commercial Code as enacted in the states of Missouri and Illinois;
- There is no statutory or factual basis for attorney's fees or punitive damages in this case;
- Respondents complied with the stated investment objectives for the account;
- Respondent Steriovsky did not recommend unsuitable investments for Claimants' account, in light of Claimants' investment objectives;
- Claimants failed to mitigate their damages;
- Claimants caused or contributed to cause the alleged damages of which Claimants complain, and if any award of damages is made it must be reduced by the percentage of liability assessed to the Claimants;
- The damages Claimants allegedly suffered were caused, if at all, by unforeseen market factors and conditions affecting the value of the securities in Claimants' account for which Respondents are not liable or responsible;
- All claims for relief are barred by the applicable statutes of limitation as set forth in all applicable statutes, rules and regulations;
- Claimant alleged no activity or specific conduct that resulted in a breach of contract by Respondent. Any claims based upon a breach of contract should be dismissed; and
- Claimant alleged no activity or specific conduct that resulted in a breach of fiduciary duty by Respondent. Any claims based upon a breach of fiduciary duty should be dismissed.

**RELIEF REQUESTED**

**Claimants Valentino requested:**

Compensatory Damages	\$97,040.00
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	any relief the panel deems just and equitable

**Respondents requested:**

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	denial and dismissal of claims

**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. Respondents A.G. Edwards & Sons, Inc. and Don Steriovsky are jointly and severally liable for and shall pay to Claimants Preston J. Valentino and Pamela L. Valentino the sum of \$26,400.00 as compensatory damages.
2. Parties shall bear their own costs, including attorney's fees.
3. Any and all relief not specifically addressed herein is 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	= \$225.00
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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 events giving rise to the dispute. Accordingly, A.G. Edwards & Sons, Inc. is assessed the following fees:

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,700.00</u>
Total	= \$3,550.00

**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 at \$750.00	= \$ 750.00
Pre-hearing conference: June 6, 2003	1 session
Two (2) Hearing sessions at \$750.00	= \$1,500.00
<u>Hearing Dates: November 4, 2003</u>	<u>2 sessions</u>
Total Forum Fees	= \$2,250.00

1. The Panel has assessed \$1,125.00 of the forum fees jointly and severally to Preston J. Valentino and Pamela L. Valentino.
2. The Panel has assessed \$1,125.00 of the forum fees jointly and severally to A.G. Edwards & Sons, Inc. and Don Steriovsky.

**FEE SUMMARY**

1. Claimant Preston J. Valentino and Pamela L. Valentino are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,125.00
<u>Total Fees</u>	<u>= \$ 1,350.00</u>
<u>Less payments</u>	<u>= \$ 925.00</u>
Balance Due NASD Dispute Resolution	= \$ 425.00

2. Respondent A.G. Edwards & Sons, Inc. is solely liable for:

Member Fees	= \$ 3,550.00
<u>Total Fees</u>	<u>= \$ 3,550.00</u>
<u>Less payments</u>	<u>= \$ 3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents A.G. Edwards & Sons, Inc. and Don Steriovsky are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 1,125.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

**ARBITRATION PANEL**

Michael Nathanson, CPA	-	Public, Presiding Chairperson
Stuart D. Summers	-	Public Arbitrator
Woody Perkins, CFP	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Michael Nathanson

12/16/03

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Michael Nathanson, CPA  
Public Arbitrator, Presiding Chairperson

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

/s/ Stuart D. Summers

12/16/03

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Stuart D. Summers  
Public Arbitrator

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

/s/ Woody Perkins

12/16/03

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Woody Perkins, CFP  
Non-Public Arbitrator

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

12/16/03

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

**ARBITRATION PANEL**

Michael Nathanson, CPA  
Stuart D. Summers  
Woody Perkins, CFP

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Public, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Michael Nathanson  
Michael Nathanson, CPA  
Public Arbitrator, Presiding Chairperson

17 Dec. 2003  
Signature Date

Stuart D. Summers  
Public Arbitrator

Signature Date

Woody Perkins, CFP  
Non-Public Arbitrator

Signature Date

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

**ARBITRATION PANEL**

Michael Nathanson, CPA  
Stuart D. Summers  
Woody Perkins, CFP

Public, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Michael Nathanson, CPA  
Public Arbitrator, Presiding Chairperson

Signature Date



Stuart D. Summers  
Public Arbitrator

12-16-03  
Signature Date

Woody Perkins, CFP  
Non-Public Arbitrator

Signature Date

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**ARBITRATION PANEL**

Michael Nathanson, CPA  
Stuart D. Summers  
Woody Perkins, CFP

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

**Concurring Arbitrators' Signatures**

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Michael Nathanson, CPA  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Stuart D. Summers  
Public Arbitrator

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Signature Date

  
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Woody Perkins, CFP  
Non-Public Arbitrator

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12/16/03  
Signature Date

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