

## **Stipulated Award**

### **NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Names of the Claimants

Deborah Persiani and Dennis Persiani

Case Number: 02-5445

Names of the Respondents

A.G. Edwards & Sons, Inc.  
and Stefan Bujanjy

Hearing Site: Chicago, Illinois

---

### **REPRESENTATION OF PARTIES**

Claimants, Debra Persiani and Dennis Persiani and ("Claimants") were represented by Howard Stein, Esq., located in Chicago, Illinois.

Respondents, A.G. Edwards & Sons, Inc., ("AGE") and ("Bujanjy"), hereinafter referred to as ("Respondents"): David M. Minnick, Esq., of A. G. Edwards & Sons, Inc., located in St. Louis, Missouri.

### **CASE INFORMATION**

Statement of Claim of Deborah and Dennis Persiani was filed on or about September 23, 2002. Uniform Submission Agreements of Deborah and Dennis Persiani were signed on September 4, 2002.

Joint Statement of Answer of Respondents A.G. Edwards & Sons, Inc, and Bujanjy was filed on November 6, 2002.

Uniform Submission Agreement of A. G. Edwards & Sons, Inc, was signed on November 6, 2002.

Uniform Submission Agreement of Stefan Bujanjy was signed October 7, 2002.

### **CASE SUMMARY**

Claimants alleged the following causes of action against Respondents: fraud, misrepresentation, suitability, breach of fiduciary duty, failure to supervise, and negligence in regard to their purchase and continued ownership of MFS Communications/WorldCom stock, the concentrated position in MFS/WorldCom stock and the use of margin.

In their Statement of Answer, Respondents denied all allegations of wrongdoing. Respondents further alleged that they adequately disclosed the risk of investments recommended to Claimants

and assisted them in making their investment decisions. The Respondents also deny being liable for Claimants' own financial decisions by attempting to obtain a "high water mark" of the previous bull market in equity securities, and particularly with respect to MCI/WorldCom stock, which Claimant Dennis Persiani acquired during his professional career with MFS Communications Company, Inc., MCI WorldCom, Inc., and WorldCom Inc. Respondents deny responsibility for the failure to maintain a prior record valuation in securities the Claimants' acquired on their own, or for any additional return above that which they actually achieved in their accounts. Respondents deny being the guarantors or the insurers of the Claimants' investments; therefore Claimants chose to accept the opportunity for profit as well as the risk of loss, and cannot transfer the risk of loss after the fact.

Respondents also asserted the following affirmative defenses: That to the extent the Statement of Claim alleges a violation of a fiduciary duty on the part of Respondents, the claim fails to state a claim for which relief can be granted because there is no cause of action for breach of fiduciary duty in non-discretionary accounts as alleged in the Statement of Claim; That to the extent the Statement of Claim alleges a violation of the rules of NASD, NYSE or any other self-regulatory organization, the claim fails to state a claim for which relief can be granted because there is no private cause of action for the violation of any such rules or regulations; Claimants' claims are barred under the doctrines of waiver, estoppel, ratification and because they authorized the transactions in their accounts; Claimants' claims are barred in full or in part by applicable statutes of limitation.

#### **RELIEF REQUESTED**

Deborah and Dennis Persiani requested damages of at least \$600,000.00, interest therein, punitive damages, attorney's fees and the cost of the arbitration.

Respondents requested that the Statement of Claim be dismissed in its entirety and that the Respondents be awarded their costs and expenses incurred in defending this action, including reasonable attorneys' fees, and that the panel enter an order that all references to this claim be expunged from Respondent Stefan Bugajny's permanent records with the Central Registration Depository.

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

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. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with NASD Dispute Resolution ("NASD").

On or about January 7, 2003, the parties informed NASD Dispute Resolution, Inc. that they had entered into a settlement agreement.

On or about February 4, 2004, the parties filed with NASD Dispute Resolution, Inc. a joint

motion to approve this Stipulated Award and that the undersigned arbitrators (the "Panel") enter an Order expunging all references to this case from the Central Registration Depository ("CRD") records of Bugajny.

### **AWARD**

After considering the pleadings and the motion to approve this Stipulated Award, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents A. G. Edwards & Sons and Stefan Bugajny are hereby dismissed with prejudice.
2. The Panel recommends the expungement of all references to the above-captioned arbitration from Stefan Bugajny's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Member 99-09, Bugajny must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directives.
3. All parties shall bear their respective costs, including attorney fees.

### **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	= \$375.00
--------------------------	------------

#### **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 event giving rise to the dispute. Accordingly, A.G. Edwards & Sons, Inc. is the Respondent firm and is therefore liable for:

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

#### **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 a the Panel x \$1,200.00 = \$1,200.00  
Pre-hearing conference: April 15, 2003 1 session

---

Total Forum Fees = \$1,200.00

1. The Panel has assessed \$600.00 of the forum fees to Claimants jointly and severally.
2. The Panel has assessed \$600.00 of the forum fees to Respondents jointly and severally.

**Fee Summary**

1. Claimants is Debra Persiani and Dennis Persiani are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 975.00
Less payments	= \$1,750.00
Balance refunded by NASD Dispute Resolution	= \$ 775.00

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

Member Fees	= \$ 7,000.00
Total Fees	= \$ 7,000.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 00

4. Respondents are jointly and severally liable for:

Forum Fee	= \$ 600.00
Less Payments	= \$ 00
Balance Due NASD Dispute Resolution	= \$ 600.00

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

**ARBITRATION PANEL**

Charles E. Custer, Esq. -Public Arbitrator, Presiding Chairperson  
Richard A. Van Kalker, Esq.- Public Arbitrator  
Bradley C. Drake-Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Charles E. Custer, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Richard A. Van Kalker, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Bradley C. Drake  
Industry Arbitrator

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

6/28/04  
Date of Service (For NASD-DR office use only)

Concurring Arbitrators' Signatures



Charles E. Custer, Esq.  
Public Arbitrator

04-14-04  
Signature Date

Richard A. Van Kalker, Esq.  
Public Arbitrator

Signature Date

Bradley C. Drake  
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

04/0

12:08 FAX

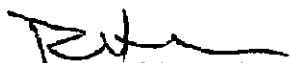
NASD

008/008

NASD Dispute Resolution  
Arbitration No. 02-5445  
Award Page 5

Concurring Arbitrators' Signatures

Charles E. Custer, Esq.  
Public Arbitrator



Richard A. Van Kalker, Esq.  
Public Arbitrator

Signature Date

4/5/04  
Signature Date

Bradley C. Drake  
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

NASD Dispute Resolution  
Arbitration No. 02-5445  
Award Page 5

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Charles E. Custer, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Richard A. Van Kalker, Esq.  
Public Arbitrator

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

Bradley C. Drake  
Bradley C. Drake  
Industry Arbitrator

4-12-04  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD-DR office use only)