

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

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In the Matter of the Arbitration Between:

Harvey A. Weisenfeld, (Claimant) v. A.G. Edwards & Sons, Inc., (Respondent)

Case Number: 02-06153

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Harvey A. Weisenfeld, hereinafter referred to as "Claimant": appeared *pro se*.

Respondent, A.G. Edwards & Sons, Inc., hereinafter referred to as "Respondent": Phyllis A. Hartrich, Esq., A.G. Edwards & Sons, Inc., St. Louis, MO.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: October 9, 2002.

Statement of Answer filed by Respondent on or about: January 6, 2003.

Respondent did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: expungement of his U-5 and U-4 form.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested an award requiring Respondent to cause the U-5 and U-4 form to be amended to delete any reference to fraudulent misconduct and to set forth in a complete and non-misleading manner, the circumstances of termination of his employment from A.G. Edwards & Sons, Inc.

Respondent requested that the Panel dismiss with prejudice Claimant's claims and that all fees in this matter be charged against Claimant.

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

Respondent filed a Motion for Summary Judgment dated May 22, 2003, and Claimant filed a response to this Motion dated May 23, 2003. Oral arguments on the Motion were held by telephonic pre-conference call on June 20, 2003. The Panel elected to treat Claimant's response of May 23, 2002 as a Cross-Motion for Summary Judgment. Upon due consideration of the submissions and arguments of the parties, the Panel denied Respondent's Motion for Summary Judgment, and granted Claimant's Cross-Motion for Summary Judgment.

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement 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 have 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, and arguments presented at the telephonic pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The U-5 form is false and/or misleading insofar as it imputes that Claimant has engaged in fraudulent misconduct with respect to forgery of customer account forms. While Respondent's internal procedures may require manual signatures from customers, Claimant undisputedly committed no fraud and obtained no money or property by his actions.
2. The Panel recommends the expungement of the "Yes" answer to Question 15 on Claimant's Form U-5 with NASD Central Registration Depository ("CRD") and the expungement of the answer to Question 9 on Form DRP-5 affixed to the Form U-5 based on the defamatory nature of this information. The Panel recommends that the answer to Question 15 should read "No" and to supplement the response to Question 9 on Form DRP-5 to reflect that the signatures were affixed by Claimant with authorization from the customer and without any improper personal benefit to Claimant, although in violation of Respondent's internal procedures. Pursuant to NASD Notices to Members 99-09 and 99-54, Claimant Weisenfeld must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
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	= \$250.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, A.G. Edwards & Sons, Inc. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

#### **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:

Two (2) Pre-hearing sessions with Panel @ \$1,000.00	= \$2,000.00
Pre-hearing conferences: May 16, 2003	1 session
June 20, 2003	1 session
Total Forum Fees	= \$2,000.00

1. The Panel has assessed all of the forum fees against Respondent.

### **Fee Summary**

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 250.00
<u>Total Fees</u>	= \$ 250.00
<u>Less payments</u>	= \$1,250.00
<u>Refund Due</u>	= \$1,000.00

2. Respondent is solely liable for:

Member Fees	= \$4,450.00
Forum Fees	= \$2,000.00
Total Fees	= \$6,450.00
Less payments	= \$2,250.00
Balance Due NASD Dispute Resolution	= \$4,200.00

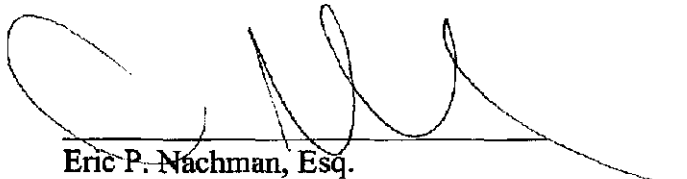
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

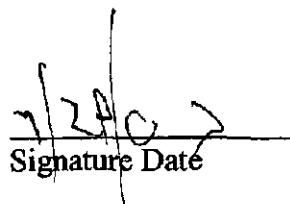
Eric P. Nachman, Esq.	-	Public Arbitrator, Presiding Chair
Hilary B. Miller, Esq.	-	Public Arbitrator
Donald P. Delano	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.



Eric P. Nachman, Esq.  
Public Arbitrator, Presiding Chairperson



Signature Date

Hilary B. Miller, Esq.  
Public Arbitrator

Signature Date

Donald P. Delano  
Non-Public Arbitrator

Signature Date

August 1, 2003  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**


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Hilary B. Miller, Esq.	-	Public Arbitrator
Donald P. Delano	-	Non-Public Arbitrator

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Eric P. Nachman, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Hilary B. Miller, Esq.  
Public Arbitrator

7/25/03  
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Signature Date

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Non-Public Arbitrator

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