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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Catherine Houle, Executrix of the  
Estate of Salvatore Saccheri

Case Number: 02-06393

Name of the Respondent  
A.G. Edwards & Sons, Inc.

Hearing Site: Orlando, Florida

Nature of the Dispute: Customer vs. Member

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**REPRESENTATION OF PARTIES**

For Catherine Houle, Executrix of the Estate of Salvatore Saccheri, referred to as "Claimant": Richard A. Stephens, Esq. and Bradford M. Gucciardo, Esq., Law Office of Richard A. Stephens, Boca Raton, Florida.

For A.G. Edwards & Sons, Inc., referred to as "Respondent A.G. Edwards": Donna L. Levy, Esq. and Marc S. Dobin, Esq., Dobin & Jenks, LLP, Jupiter, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: October 21, 2002.

Claimant signed the Uniform Submission Agreement on: October 18, 2002.

Statement of Answer and Affirmative Defenses filed by Respondent A.G. Edwards on or about: January 6, 2003.

Respondent A.G. Edwards signed the Uniform Submission Agreement on: December 9, 2002.

Claimant's Reply to Respondent A.G. Edwards' Affirmative Defenses, et al., filed on or about: January 17, 2003.

**CASE SUMMARY**

Claimant alleged the following causes of action: 1) violation of Chapter 517, Florida Statutes, and Florida Administrative Code, Chapter 3E-600.002(2); 2) state common law fraud and breach of fiduciary duty; 3) "controlling persons" liability under Securities Exchange Act, SEC. 20(a); 4) violation of NASD Code Rule 2120: Manipulative, Deceptive and Fraudulent Devices; 5) violation of IM-2310-2 under NASD Conduct Rule 2310: Fair Dealing, Fraudulent Activity and Unauthorized Transactions; 6) violation of NASD Conduct Rule 2510(b) and New York Stock Exchange Rule 408: Written Authorization for Discretionary Accounts; 7) violation of NASD

Conduct Rule 2310 and New York Stock Exchange Rule 405 ("Know Your Customer"); Unsuitability; 8) violation of NASD Conduct Rule 2210(d)(1)(A): Fair Dealing and Good Faith; 9) violation of NASD Conduct Rule 2110: Commercial Honor and Principles of Trade; 10) negligence, gross negligence and negligent misrepresentations; 11) breach of contract; and 12) violation of NASD Conduct Rule 3010(a): Negligent Supervision. The causes of action relate to investments in various options and shares of stock, including Ascend Communications, Cisco Systems, Credence Systems, Cymer, Inc., Priceline.com, JDS Uniphase, Netzero Inc., QuePasa.com, Intel, Ericsson Telephone and Juniper Networks.

Respondent A.G. Edwards denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in an amount not less than \$1,025,000.00; 2) punitive damages in the amount of \$3,000,000.00; 3) interest; 4) attorneys' fees; 5) costs; and 6) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent A.G. Edwards requested: 1) dismissal of the Statement of Claim in its entirety; and 2) attorneys' fees.

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

On or about November 13, 2003, the parties filed their Stipulation Permitting Substitution of Estate as Party. On or about November 18, 2003, the Panel entered its Order Permitting Substitution of Estate as Party. The Panel permitted amendment to the Statement of Claim to substitute Catherine Houle, Executrix of the Estate of Salvatore Saccheri, for decedent Salvatore Saccheri.

At the evidentiary hearing, the Panel: 1) denied Respondent A.G. Edwards' motion against the introduction of the Affidavit of Salvatore Saccheri; 2) denied Respondent A.G. Edwards' motion against the introduction of JNPR trades; 3) denied Respondent A.G. Edwards' motion against the introduction of EBAY trades; 4) denied Respondent A.G. Edwards' motion against the introduction of BRCM trades; 5) denied Respondent A.G. Edwards' motion against the introduction of telephonic testimony of witness Milanes; 6) granted Respondent A.G. Edwards' introduction of the Milanes brief; and 7) denied Respondent A.G. Edwards' motion against witness Stephens being allowed to testify.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent A.G. Edwards is liable and shall pay to Claimant compensatory damages in the amount of \$750,000.00, plus interest at the Florida legal rate, which shall accrue from the date of Respondent A.G.

Edwards' receipt of the Award until the date of payment. The Panel finds Respondent A.G. Edwards liable for/under: a) violation of Section 517.301, Florida Statutes; b) Florida State common law fraud and breach of fiduciary duty; c) Section 20(a) of the Securities Exchange Act; d) violation of NASD Conduct Rule 2120: Manipulative, Deceptive, and Fraudulent Devices; e) violation of IM-2310-2 under NASD Conduct Rule 2310: Fair Dealing, Fraudulent Activity and Unauthorized Transactions; f) violation of NASD Conduct Rule 2510(b) and NYSE Rule 408: Written Authorization for Discretionary Accounts; g) violation of NASD Conduct Rule 2310 and NYSE Rule 405: ("Know Your Customer"); h) violation of NASD Conduct Rule 2210(d)(1)(A): Fair Dealing and Good Faith; i) violation of NASD Conduct Rule 2110: Commercial Honor and Principles of Trade; j) gross negligence and negligent misrepresentations; k) breach of contract; and l) violation of NASD Conduct Rule 3010(a): Negligent Supervision.

2. Respondent A.G. Edwards is liable and shall pay to Claimant punitive damages in the amount of \$2,250,000.00. Punitive damages are awarded under Sections 768.72, 768.737, 768.725 and 768(c), Florida Statutes, and SEC Rule 10b-5. According to Florida Statutes, this Panel awards punitive damages of \$2,250,000.00 because of the gross negligence (if not intentional negligent acts) in the lack of supervision of this broker, this office, and his immediate supervisor. This is evidenced by the activities of the broker, his supervisor and the company compliance staff. Respondent A.G. Edwards is guilty of fraud as is evidenced by the falsification of Mr. Saccheri's account application, specifically years of options experience. Respondent A.G. Edwards is guilty of gross and flagrant negligence of oversight, and a total lack of supervision evidenced by the lack of activity letters, the overlooking of the fraud and falsification of documents by the broker and its own involvement in this fraud, by engaging in trades in the Claimant's account without prior authority, and by violating its own policies and procedures as written in its own policy manual. Respondent A.G. Edwards is guilty of failure to advise the client that he had the legal right to reject unauthorized trades.

3. Respondent A.G. Edwards is liable and shall pay to Claimant attorneys' fees in an amount to be determined by a court of competent jurisdiction. Attorneys' fees are awarded pursuant to Chapter 517, Florida Statutes, for fraud, gross negligence regarding oversight, all reasons stated in paragraph 2 of this Award, and pursuant to the Chairperson's Order to Compel Discovery issued on December 2, 2002.

4. Respondent A.G. Edwards is liable and shall pay to Claimant costs, including expert witness fees, in an amount to be determined by a court of competent jurisdiction.

5. Respondent A.G. Edwards is liable and shall reimburse Claimant \$600.00 which represents the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

6. Respondent A.G. Edwards' requests for costs and attorneys' fees are denied.

7. Any and all claims or relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 600.00

**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, Respondent A.G. Edwards is a member firm and a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested 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.

There were no injunctive relief fees assessed during these proceedings.

**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 @ \$1,200.00 per session	= \$1,200.00
Pre-hearing conference: April 22, 2003 1 session	

Six (6) Hearing sessions @ \$1,200.00 per session	= \$7,200.00
Hearing Dates: December 8, 2003 2 sessions	
December 9, 2003 2 sessions	
December 10, 2003 2 sessions	

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Total Forum Fees	= \$8,400.00
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The Panel has assessed the total forum fees in the amount of \$8,400.00 to Respondent A.G. Edwards.

**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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
Total Fees	= \$ 600.00
<u>Less payments</u>	= \$ 600.00
Balance Due NASD	= \$ 0.00

Respondent A.G. Edwards is solely liable for:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 8,400.00
Total Fees	= \$16,950.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD	= \$ 8,400.00

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

**ARBITRATION PANEL**

<i>Ian S. Greig</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>William S. Glickfield, Esq.</i>	-	<i>Public Arbitrator</i>
<i>George E. Bouse</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
/s/  
Ian S. Greig  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
January 2, 2004  
Signature Date

\_\_\_\_\_  
/s/  
William S. Glickfield, Esq.  
Public Arbitrator

\_\_\_\_\_  
January 2, 2004  
Signature Date

\_\_\_\_\_  
/s/  
George E. Bouse  
Non-Public Arbitrator

\_\_\_\_\_  
January 2, 2004  
Signature Date

\_\_\_\_\_  
January 5, 2004  
Date of Service (For NASD use only)

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There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
<u>Total fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 600.00
<u>Balance Due NASD</u>	= \$ 0.00

Respondent A.G. Edwards is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 8,400.00
<u>Total Fees</u>	= \$16,950.00
<u>Less payments</u>	= \$ 8,550.00
<u>Balance Due NASD</u>	= \$ 8,400.00

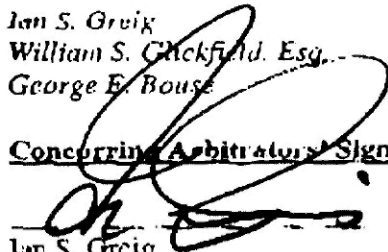
All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Ian S. Greig  
 William S. Glickfield, Esq.  
 George E. Bouse

Public Arbitrator, Presiding Chairperson  
 Public Arbitrator  
 Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
 Ian S. Greig  
 Public Arbitrator, Presiding Chairperson

  
 Signature Date

William S. Glickfield, Esq.  
 Public Arbitrator

Signature Date

George E. Bouse  
 Non-Public Arbitrator

Signature Date

Date of Service (For NASD use only)

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 600.00
<u>Balance Due NASD</u>	= \$ 0.00

Respondent A.G. Edwards is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 8,400.00
<u>Total Fees</u>	= \$16,950.00
<u>Less payments</u>	= \$ 8,550.00
<u>Balance Due NASD</u>	= \$ 8,400.00

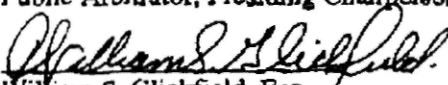
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**ARBITRATION PANEL**

Ian S. Greig  
William S. Glickfield, Esq.  
George E. Bouse

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Ian S. Greig  
Public Arbitrator, Presiding Chairperson  
  
William S. Glickfield, Esq.  
Public Arbitrator

Signature Date

1-2-04  
Signature Date

George E. Bouse  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD use only)

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There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 600.00
<u>Balance Due NASD</u>	= \$ 0.00

Respondent A.G. Edwards is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 8,400.00
<u>Total Fees</u>	= \$16,950.00
<u>Less payments</u>	= \$ 8,550.00
<u>Balance Due NASD</u>	= \$ 8,400.00

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

ARBITRATION PANEL

<u>Ian S. Greig</u>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<u>William S. Glickfield, Esq.</u>	-	<i>Public Arbitrator</i>
<u>George E. Bouse</u>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Ian S. Greig  
 Public Arbitrator, Presiding Chairperson

Signature Date

William S. Glickfield, Esq.  
 Public Arbitrator

Signature Date

George E. Bouse  
 Non-Public Arbitrator

1-2-04  
 Signature Date

Date of Service (For NASD use only)