

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

CASE: 02-07282

Grace E. Deel, claimant vs. James Edward Mayer, Jr. and A.G. Edwards & Sons, Inc., respondents.

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**ATTORNEYS:**

Claimant appeared pro se, Orwell, OH.

For Respondents appeared in-house counsel Michael Naccarato, Esq., St. Louis, MO.

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**DATE FILED:** December 2, 2002

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**CASE SUMMARY:** Claimant alleged that respondents executed trades without her authorization, engaged in sales practice misconduct and failed to disclose facts concerning various mutual funds in her account. Claimant maintained that because of respondents' actions, her account suffered a loss.

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**ARBITRATOR'REPORT:** See attached Exhibit A.

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**Claim Data**

Claim: \$14,382.00  
Punitive: Unspecified  
Filing Fees: Unspecified

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**Award Data**

Award: \$8,630.00  
Punitive: \$.00  
Filing Fees: \$.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondents are jointly and severally liable and shall pay to the claimant \$8,630.00. 2) All requests for punitive damages are denied. 3) All other relief requests are denied. 4) The \$125.00 filing fee and \$300 hearing session deposit was previously waived by NASD Dispute Resolution. 5) Respondents are jointly and severally liable and shall pay NASD Dispute Resolution \$425.00 as reimbursement of the filing fee and hearing session deposit. 6) Respondent James Edward Mayer, Jr.'s request for expungement from his CRD record is denied.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, respondent, A.G. Edwards & Sons, Inc., has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

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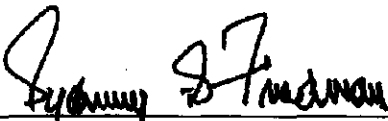
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Award 02-07282

Sydney S. Friedman, Esq.

Sole Public Arbitrator

**AFFIRMATION**

I, Sydney S. Friedman, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

  
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Sydney S. Friedman, Esq.

  
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Signature Date

May 9, 2003  
Date of Service (For NASD-DR office use only)

April 22, 2003

NASD Dispute Resolution, Inc.  
Attn: Jennifer Foster, Legal Assistant  
165 Broadway-27<sup>th</sup> Floor  
New York, NY 10006-1400

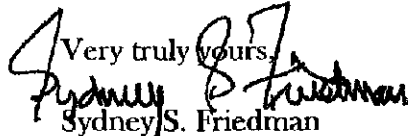
Re: NASD-DR 02-07282 Grace E. Deel v. James Edward Mayer, Jr. et al

Dear Ms. Foster:

There follows my ruling in the above captioned arbitration which you submitted to me by letter dated February 27, 2003:

1. Because the authorization solicited by and given to Respondents by Claimant was not followed, the transactions which flowed from that in the light of all the circumstances are tainted. (See Claimant Ex. 2 and Respondent Ex. B, the Mutual Fund Switch Disclosure Document and Exhibit C, A. G. Edwards Systematic Withdrawal Authorization). Except for the reference to the Evergreen Omega Fund in Ex. B, no mention is made of any dollar amount, and while it also states the following: " Build a money market to take monthly distributions, " there is nothing in that language nor in Ex. C., providing for a monthly distribution of \$300.00, to even suggest that these distributions could, and, in fact, did result in distributions from principal.
2. It is fair to conclude, based on the evidence before me, that, at best, Claimant was confused and, at worst, uninformed.
3. The Claimant's pursuit of her remedy is timely.
4. There is acknowledgment by Claimant that \$10,000.00 could be invested in the Evergreen Omega mutual fund (see Claimant Ex. 5). This means that \$10, 000.00 of the total amount switched, \$25,303.00, and invested in her behalf, resulted in a 40% authorized investment and \$15,330.50 or 60% unauthorized. Her recovery is limited to 60% of the alleged loss. (Although the exact percentages are 39.517% and 60.450%. I have rounded them off to 60%, 40%).
5. I rule that Claimant is entitled to an Award against Respondents jointly and severally in the amount of \$8,630.00.
6. I further rule that Claimant's request for punitive damages is denied.
7. I further rule that Costs for this arbitration are to be charged to Respondents jointly and severally.

Please let me hear from you on your receipt of this letter.

Very truly yours,  
  
Sydney S. Friedman

SF/p