

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

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In the Matter of the Arbitration Between:

David M. Guarino and Joelle Guarino (Claimants) v. A.G. Edwards & Sons, Inc. and  
Peter Hammond Clark (Respondents)

Case Number: 03-00110

Hearing Site: Boston, Massachusetts

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Nature of the Dispute: Customers v. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimants David M. Guarino ("D. Guarino") and Joelle Guarino ("J. Guarino")  
hereinafter collectively referred to as "Claimants": Michael F. Hanley, Esq., Plante &  
Hanley, P.C., White River Junction, VT.

Respondents A.G. Edwards & Sons, Inc. ("Edwards") and Peter Hammond Clark  
("Clark") hereinafter collectively referred to as "Respondents": Matthew R. Salamon,  
Esq., A.G. Edwards & Sons, Inc., St. Louis, MO.

**CASE INFORMATION**

Statement of Claim filed on or about: January 2, 2003.

Motion to Amend filed by Claimants on or about: February 6, 2004.

Claimant D. Guarino signed the Uniform Submission Agreement: December 20, 2002.

Claimant J. Guarino signed the Uniform Submission Agreement: December 20, 2002.

Joint Statement of Answer filed by Respondents on or about: March 17, 2003.

Opposition to Claimants' Motion to Amend filed by Respondents on or about: March 23,  
2004.

Respondent Edwards signed the Uniform Submission Agreement: February 5, 2003.

Respondent Clark signed the Uniform Submission Agreement: March 13, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: excessive trading; imprudent stock  
selection; suitability; mismanagement. Claimants' claim involved unspecified common  
stock.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages for losses in their account in the amount of \$207,124 plus \$32,000.00 for excess taxes; compensation for their emotional distress; punitive damages in the amount of \$2,600,000.00; costs; attorneys' fees; and other case-related costs.

Respondents requested that the Statement of Claim be dismissed with prejudice, that Respondents be awarded their costs, for an award recommending the expungement of any reference to these proceedings from Respondents' records as maintained by the Central Registration Depository organization, and for any other and further relief deemed appropriate under the facts and circumstances of the case.

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

During the recess between the third and fourth hearings, the Claimants moved to amend the pleadings to include the allegation of unauthorized trading, which the Panel granted.

During the hearings in this matter, the Claimants introduced documents and expert testimony showing their loss in value to be \$223,717.00. After due deliberation, the panel accepted that evidence and treated it as an amendment to the pleadings to conform to the evidence.

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 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 are jointly and severally liable for and shall pay to Claimants compensatory damages in the amount of \$250,000.00.
2. Respondents are jointly and severally liable for and shall pay to Claimants the sum of \$500.00, to reimburse Claimants for the filing fee previously paid to NASD Dispute Resolution.
3. Respondents are jointly and severally liable for and shall pay to Claimants \$5,000.00 to reimburse them for witness fees and expenses incurred for Dr. Laber.
4. Any and all relief not specifically addressed herein, including punitive damages, 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 | = \$ 500.00 |
|--------------------------|-------------|

#### **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, A.G. Edwards & Sons, Inc. is a party.

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

#### **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:

|  |               |
|--|---------------|
| Two (2) Pre-hearing sessions with Panel @ \$1,200.00 | = \$ 2,400.00 |
|--|---------------|

|                          |                    |           |
|--------------------------|--------------------|-----------|
| Pre-hearing conferences: | July 2, 2003       | 1 session |
|                          | September 30, 2003 | 1 session |

|  |               |
|--|---------------|
| Nine (9) Hearing sessions @ \$1,200.00 | = \$10,800.00 |
|--|---------------|

|                |                  |            |
|----------------|------------------|------------|
| Hearing Dates: | January 27, 2004 | 2 sessions |
|                | January 28, 2004 | 2 sessions |
|                | January 29, 2004 | 2 sessions |
|                | May 25, 2004     | 3 sessions |

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|                  |               |
|------------------|---------------|
| Total Forum Fees | = \$13,200.00 |
|------------------|---------------|

1. The Panel has assessed \$13,200.00 of the forum fees jointly and severally against Respondents.

#### **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.

1. Claimants requested duplication of hearing tapes = \$150.00

**Fee Summary**

1. Claimants are jointly and severally liable for:

|                             |               |
|-----------------------------|---------------|
| Initial Filing Fee          | = \$ 500.00   |
| <u>Administrative Costs</u> | = \$ 150.00   |
| Total Fees                  | = \$ 650.00   |
| <u>Less payments</u>        | = \$ 1,850.00 |
| Refund Due Claimants        | = \$ 1,200.00 |

*As stated in the "Award" section above, Respondents are jointly and severally liable for and shall reimburse Claimants for the \$500.00 filing fee.*

2. Respondent Edwards is solely liable for:

|                                     |               |
|-------------------------------------|---------------|
| <u>Member Fees</u>                  | = \$ 8,550.00 |
| Total Fees                          | = \$ 8,550.00 |
| <u>Less payments</u>                | = \$ 8,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00     |

3. Respondents are jointly and severally liable for:

|                                     |               |
|-------------------------------------|---------------|
| <u>Forum Fees</u>                   | = \$13,200.00 |
| Total Fees                          | = \$13,200.00 |
| <u>Less payments</u>                | = \$ 0.00     |
| Balance Due NASD Dispute Resolution | = \$13,200.00 |

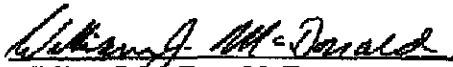
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|---|
| All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code. |
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**ARBITRATION PANEL**

|                           |   |                                    |
|---------------------------|---|------------------------------------|
| William J. McDonald, Esq. | - | Public Arbitrator, Presiding Chair |
| Nancy J. Mayer, JD        | - | Public Arbitrator                  |
| David J. Kaufman          | - | 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 in which is my award.



William J. McDonald, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Nancy J. Mayer, JD  
Public Arbitrator

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

\_\_\_\_\_  
David J. Kaufman  
Non-Public Arbitrator

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

\_\_\_\_\_  
June 21, 2004  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

William J. McDonald, Esq. - Public Arbitrator, Presiding Chair  
Nancy J. Mayer, JD - Public Arbitrator  
David J. Kaufman - Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Signature Date

  
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**Concurring Arbitrators' Signatures**

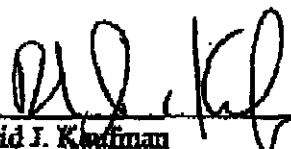
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Public Arbitrator, Presiding Chairperson

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Signature Date

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