

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert J. O'Brien Deceased IRA FBO Bess O'Brien (Claimant) v. A.G. Edwards & Sons, Inc., Robert Byrne, and Robert Bagby (Respondents)

Case Number: 03-00418

Hearing Site: Cincinnati, Ohio

Nature of the Dispute: Customer v. Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimant Robert J. O'Brien Deceased IRA FBO Bess O'Brien ("O'Brien"), hereinafter referred to as "Claimant": George Schenk, Blue Ash, OH.

Respondents A.G. Edwards & Sons, Inc. ("A.G. Edwards"), Robert Byrne ("Byrne"), and Robert Bagby ("Bagby"), 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 17, 2003.

Claimant's Reply to Respondents' Joint Statement of Answer filed on or about: May 16, 2003.

Claimant signed the Uniform Submission Agreement: February 2, 2003.

Joint Statement of Answer filed by Respondents on or about: April 29, 2003.

Respondent A.G. Edwards signed the Uniform Submission Agreement: March 20, 2003.

Respondent Byrne signed the Uniform Submission Agreement: March 28, 2003.

Respondent Bagby signed the Uniform Submission Agreement: March 20, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: failure to supervise; breach of fiduciary duty; suitability; breach of contract; negligence; misrepresentations; and omission of facts. Claimant's claim involved corporate bonds, mutual funds, and preferred stock.

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

RELIEF REQUESTED

Claimant requested \$52,534.70 in compensatory damages, \$525,347.00 in punitive

damages, interest, forum fees, and other case-related costs.

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

OTHER ISSUES CONSIDERED AND DECIDED

On or about April 29, 2003, Respondents made a Motion to Dismiss Respondent Bagby. After considering all submissions and due deliberation, the Panel determined to grant the Motion.

By Order dated March 17, 2004, the Panel granted Claimant's Motion for Sanctions and found Respondent A.G. Edwards in violation of Rule 10321(b)(2) of the NASD Code of Arbitration Procedure. The Panel directed Respondent A.G. Edwards to pay Claimant \$5,000.00. By copy of Respondent A.G. Edwards' April 16, 2004 letter (with a copy of the check), NASD Dispute Resolution was notified that this sanction was paid in full.

After the conclusion of the hearings in this matter, on or about June 16, 2004 Claimant submitted correspondence regarding evidence in this matter that he requested be considered by the Panel. After due deliberation and consideration of all related correspondence, the Arbitrators determined that no additional evidence may be presented in this matter. By letter dated June 22, 2004, sent via facsimile, the parties were advised of the Panel's decision.

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, 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 A.G. Edwards and Byrne are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$12,000.00.
2. Respondents A.G. Edwards and Byrne are jointly and severally liable for and shall pay to Claimant \$375.00 to reimburse Claimant for the non-refundable filing fee previously paid to NASD Dispute Resolution.
3. 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	= \$ 375.00
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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 person at the time of the events giving rise to the dispute. Accordingly, A.G. Edwards & Sons, Inc. is a party.

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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$2,400.00
Pre-hearing conferences:	
August 29, 2003	1 session
September 25, 2003	1 session
Four (4) Hearing sessions @ \$1,200.00	= \$ 4,800.00
Hearing Dates:	
June 8, 2004	2 sessions
June 9, 2004	2 sessions
Total Forum Fees	= \$7,200.00

1. The Panel has assessed \$3,600.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,600.00 of the forum fees jointly and severally against Respondents A.G. Edwards and Byrne.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$3,600.00</u>
Total Fees	= \$3,975.00
<u>Less payments</u>	<u>= \$1,575.00</u>

Balance Due NASD Dispute Resolution = \$2,400.00

In accordance with the Award section above, Respondents A.G. Edwards and Byrne are jointly and severally liable for and shall pay to Claimant \$375.00 to reimburse Claimant for the non-refundable filing fee previously paid to NASD Dispute Resolution.

2. Respondent A.G. Edwards is solely liable for:

<u>Member Fees</u>	= \$7,000.00
<u>Total Fees</u>	= \$7,000.00
<u>Less payments</u>	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents A.G. Edwards and Byrne are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,600.00
<u>Total Fees:</u>	= \$3,600.00
<u>Less Payments:</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,600.00

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

ARBITRATION PANEL

Alex H. Keller	-	Public Arbitrator, Presiding Chairperson
Lisa Shusterman	-	Public Arbitrator
Jerome A. Stricker	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures:

I, the undersigned arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Alex H. Keller
Alex H. Keller
Public Arbitrator, Presiding Chairperson

6-24-04
Signature Date

Lisa Shusterman
Public Arbitrator

Signature Date

Jerome A. Stricker
Non-Public Arbitrator

Signature Date

June 29, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Alex H. Keller	•	Public Arbitrator, Presiding Chairperson
Lisa Shusterman	•	Public Arbitrator
Jerome A. Stricker	•	Non-Public Arbitrator

Concurring Arbitrators' Signatures:

I, the undersigned arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Alex H. Keller
Public Arbitrator, Presiding Chairperson

Signature Date



Lisa Shusterman
Public Arbitrator

6.25.04

Signature Date

Jerome A. Stricker
Non-Public Arbitrator

Signature Date

June 29, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Alex H. Keller	-	Public Arbitrator, Presiding Chairperson
Lisa Shusterman	-	Public Arbitrator
Jerome A. Stricker	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures:

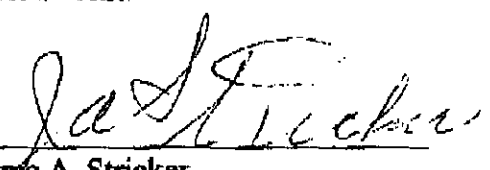
I, the undersigned arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Alex H. Keller
Public Arbitrator, Presiding Chairperson

Signature Date

Lisa Shusterman
Public Arbitrator

Signature Date



Jerome A. Stricker
Non-Public Arbitrator



Signature Date

June 29, 2004

Date of Service (For NASD Dispute Resolution use only)