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

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In the Matter of the Arbitration Between:

Name of the Claimant  
William A. Warde

Case Number: 03-00452

Names of the Respondents  
A.G. Edwards & Sons, Inc.  
William Tabone

Hearing Site: Orlando, Florida

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For William A. Warde, referred to as "Claimant": Richard J. Lantinberg, Esq., Law Offices of Cooper Ridge & Lantinberg, Jacksonville, Florida.

For A.G. Edwards & Sons, Inc. ("A.G. Edwards") and William Tabone ("Tabone"), collectively referred to as "Respondents": Matthew Salamon, Litigation Counsel with Respondent A.G. Edwards, St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: January 20, 2003.

Claimant signed the Uniform Submission Agreement on: January 23, 2003.

Statement of Answer filed by Respondents on or about: March 20, 2003.

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

Respondent Tabone signed the Uniform Submission Agreement on: February 26, 2003.

**CASE SUMMARY**

Claimant alleged the following causes of action in connection with the recommendation by Respondents that Claimant should invest his funds with the Roxbury Capital Management Large Cap Growth money management program in October 1999: 1) unsuitable recommendation; 2) violation of the Florida Securities and Investor Protection Act; 3) breach of fiduciary duty; 4) breach of contract (duty of loyalty, utmost honesty and good faith); and 5) failure to supervise.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses. In particular, Respondents asserted that the Florida Securities and Investor

Protection Act, Chapter 517, Florida Statutes, was inapplicable because Respondents' conduct did not involve the purchase or sale of securities and the contract documents between Claimant and Respondent A.G. Edwards expressly exculpated the Respondents and indemnified them from loss occasioned by the activities of the recommended money manager.

### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the form of losses in excess of \$92,000.00 and costs or commissions in excess of \$7,600.00; 2) statutory and pre-judgment interest; 3) costs; 4) punitive damages; and 5) a finding of entitlement to attorneys' fees, the amount of which is to be determined by a court of competent jurisdiction.

Respondents requested: 1) dismissal of the Statement of Claim in its entirety with prejudice; 2) costs; 3) attorneys' fees; 4) expungement and 5) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

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

The parties agreed that the appropriate court having subject matter jurisdiction, and not the Panel, would enter a judgment granting of the amount of reasonable attorneys' fees, if the award by the Panel supported an entitlement.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found liable for damages as a result of their failure to recommend a suitable money management program in light of Claimant's express suitability criteria and the standards imposed by Respondent A.G. Edwards on its representative when making a recommendation of money managers to its clients and to this Claimant.

2. The Panel expressly finds that the contract documents between Claimant and Respondent A.G. Edwards do not exculpate the Respondents and do not indemnify them from loss occasioned by their recommendations of a money manager and that Section 517.301(1)(a), Florida Statutes, encompasses not only the sale or purchase of securities but the "rendering of any investment advice."

3. Respondents are jointly and severally found liable for compensatory damages in the amount of \$32,021.00.

4. Respondents are jointly and severally liable and shall pay to Claimant interest from the date of this

Award at the Florida statutory rate until the damages awarded are paid in full.

5. Respondents are jointly and severally liable and shall pay to Claimant costs, excluding reimbursement of the initial claim filing fee, in the amount of \$1,470.00. Respondent A.G. Edwards is liable and shall reimburse Claimant \$225.00 which represents the claim filing fee assessed to Claimant. Except as provided herein, the parties shall bear their respective costs and expenses incurred by them in connection with this proceeding.

6. Based on the Panel's finding of a violation of Section 517.301, Florida Statutes, of the Florida Securities and Investor Protection Act, by Respondents and an express finding of the Panel that it is not unjust to so do as provided in Section 517.211, Florida Statutes, Claimant may pursue recovery of reasonable attorneys' fees incurred in this proceeding in a court of competent jurisdiction.

7. Respondents' requests for attorneys' fees and expungement are denied.

8. Claimant's request for punitive damages is denied.

9. 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	= \$ 225.00
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NASD Dispute Resolution preliminarily waived Claimant's initial claim filing fee. The Panel determined to assess the initial claim filing fee to Claimant.

#### **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	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

#### **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 a single arbitrator @ \$450.00 per session = \$ 450.00  
Pre-hearing conference: December 18, 2003 1 session

One (1) Pre-hearing session with Panel @ \$750.00 per session = \$ 750.00  
Pre-hearing conference: August 5, 2003 1 session

Two (2) Hearing sessions @ \$750.00 per session = \$1,500.00  
Hearing Date: March 2, 2004 2 sessions

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Total Forum Fees = \$2,700.00

The Panel has assessed the total forum fees in the amount of \$2,700.00 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>	= \$ 225.00
Total Fees	= \$ 225.00
<u>Less payments</u>	= \$ 70.00
Balance Due NASD Dispute Resolution	= \$ 155.00

Respondent A.G. Edwards is solely liable for:

Member Fees	= \$3,550.00
<u>Forum Fees</u>	= \$2,700.00
Total Fees	= \$6,250.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$2,700.00

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

**ARBITRATION PANEL**

<i>Arthur R. Louv, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Charles Tindell, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Gene F. Mag</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

<u>                    /s/                    </u>	<u>March 30, 2004</u>
Arthur R. Louv, Esq.	Signature Date
Public Arbitrator, Presiding Chairperson	

<u>                    /s/                    </u>	<u>March 26, 2004</u>
Charles Tindell, Esq.	Signature Date
Public Arbitrator	

<u>                    /s/                    </u>	<u>March 26, 2004</u>
Gene F. Mag	Signature Date
Non-Public Arbitrator	

March 30, 2004  
Date of Service (For NASD Dispute Resolution office use only)

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**ARBITRATION PANEL**

Arthur R. Louv, Esq.

Public Arbitrator, Presiding Chairperson

Charles Tindell, Esq.

Public Arbitrator

Gene F. Mag

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Arthur R. Louv, Esq.

Public Arbitrator, Presiding Chairperson

March 30, 2004  
Signature Date

Charles Tindell, Esq.

Public Arbitrator

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Signature Date

Gene F. Mag

Non-Public Arbitrator

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

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No. 0145 P. 0/0

Mar 18, 2004 11:07 AM

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**ARBITRATION PANEL***Arthur R. Louv, Esq.**Charles Tindell, Esq.**Gene F. Mag**Public Arbitrator, Presiding Chairperson**Public Arbitrator**Non-Public Arbitrator***Concurring Arbitrators' Signatures***Arthur R. Louv, Esq.**Public Arbitrator, Presiding Chairperson**Charles Tindell**Charles Tindell, Esq.**Public Arbitrator**Signature Date**3-26-04**Signature Date**Gene F. Mag**Non-Public Arbitrator**Signature Date*Date of Service (For NASD Dispute Resolution office use only)

FROM :

FAX NO. :

Mar. 26 2004 01:14PM P6

Mar. 26, 2004 11:38AM NASD

No. 3750 P. 6/6

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**ARBITRATION PANEL**

Arthur R. Louv, Esq.  
Charles Tindell, Esq.  
Gene F. Mag

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Arthur R. Louv, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Charles Tindell, Esq.  
Public Arbitrator

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