

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimants  
Harold and Jill Lewis

Case Number: 03-00524

Name of the Respondents  
A.G. Edwards & Sons, Inc.  
Charles A. Hessler

Hearing Site: St. Louis, Missouri

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**NATURE OF DISPUTE**

Customer vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Albert S. Watkins, Esq. of the law firm Kodner, Watkins, Muchnick, Dunne & Weigley, L.C., located in St. Louis, Missouri, represented the Claimants, Harold and Jill Lewis, hereinafter referred to as "Claimants."

M. Jane Matoesian, Esq. and James Browning, Esq. of A.G. Edwards & Sons, Inc., located in St. Louis, Missouri, represented the Respondents, A.G. Edwards & Sons, Inc. ("Edwards") and Charles A. Hessler ("Hessler"), hereinafter collectively referred to as "Respondents."

**CASE INFORMATION**

Statement of Claim filed on or about December 23, 2003.

Claimants, Harold and Jill Lewis jointly signed the Uniform Submission Agreement on January 22, 2003.

Respondents, A.G. Edwards & Sons, Inc. and Charles A. Hessler, jointly filed a Motion to Dismiss, Motion for More Definite Statement and their Answer on March 27, 2003.

Respondent, A.G. Edwards & Sons, Inc. signed the Uniform Submission Agreement on February 4, 2003.

Respondent, Charles A. Hessler, signed the Uniform Submission Agreement on February 19, 2003.

Claimants filed a response to Respondents' Motion to Dismiss on April 1, 2003 and a response to Respondents' Motion for More Definite Statement on April 2, 2003.

### CASE SUMMARY

Claimants asserted the following causes of action: margin calls, failure to supervise, breach of fiduciary duty, misrepresentations, omission of facts, suitability, violation of state securities laws and violation of NASD Rules. The causes of action relate to the order execution of various technology stock trades. Claimants asserted that investments were high-risk, volatile and unsuitable to Claimant's needs and objectives.

Unless specifically admitted in its Answer, Respondents Edwards and Hessler denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants' Statement of Claim fails to state a claim upon which relief can be granted.
2. Claimants' claims are barred by the applicable statutes of limitation, including, but not limited to, those claims under the Missouri Securities Act and Section 10(b) of the Securities Exchange Act of 1934. Respondents reserve the right to file a Motion to Dismiss based on the applicable statutes of limitation when additional information is learned and Claimants have more specifically delineated their claims.
3. Claimants' claims are barred by reason of the fact that to the extent Claimants sustained any loss or injury, which Respondents deny, such loss or injury was caused by the acts or omissions of third parties over which Respondents have no control.
4. Claimants' claims are barred by the doctrine of unclean hands.
5. The Statute of Frauds bars Claimants' claims.
6. The doctrines of lack of consideration and failure of consideration bar Claimants' claims.
7. Claimants' claims are barred as a direct and proximate result of the negligence and/or fault of Claimants; further, if Respondents are found to be negligent in any respect, Claimants' negligence was equal to or greater than any negligence on the part of Respondents, and for this reason, Claimants' claims must be dismissed or reduced under the doctrines of contributory negligence, comparative fault or comparative negligence in accordance with applicable law.
8. Claimants' claims for damages, if any, are barred by reason of the fact that Claimants' losses, if any, were a result of a "second investment decision" by Claimants.
9. Claimants' claim for punitive damages is barred since any award of punitive damages would violate the Respondents' constitutional rights under the due process clause of the Fourteenth Amendment and the excessive penalties clause of the Eighth Amendment of the United States Constitution.
10. As a result of Claimants' failure to notify Edwards of the alleged acts and omissions of which Claimants now complain promptly after receipt of written confirmations, monthly statements and other documents evidencing or setting forth transactions in Claimants' account and, in any event, promptly after Claimants discovered or reasonably should have discovered the alleged acts

- or omissions, Claimants are barred from recovering from Edwards under the doctrines of ratification, account stated, estopped, waiver and laches.
11. Claimants failed to act promptly and with due diligence to mitigate their damages after Claimants knew or should have known of the alleged acts and omissions of which Claimants complain. To the extent Claimants allege damages were sustained after such time, Claimants are barred from recovering such damages.
  12. Claimants ratified the alleged conduct about which they complain.
  13. Respondents owed no fiduciary duty to Claimants under applicable law, as their accounts were non-discretionary.
  14. To the extent the Statement of Claim alleges a violation of the rules of National Association Securities Dealers, Inc., the New York Stock Exchange, Inc. or any other self-regulatory organization, the Claim fails to state a claim for relief as there is no private cause of action for the violation of such rules or regulations.

#### **RELIEF REQUESTED**

Claimants, Harold and Jill Lewis, requested:

Compensatory Damages	\$4,400,000.00
Punitive Damages	\$4,400,000.00
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	Disciplinary referral on Charles A. Hessler

Respondents, Edwards and Hessler, requested that Panel dismiss all claims of Claimants' Statement of Claim, with prejudice, award Respondents their costs and attorney's fees, enter an Order that Respondent Hessler's permanent record be expunged, and such other relief deemed just and proper.

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

Respondents' Motion to Dismiss and Motion for More Definite Statement was denied by the Panel.

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. Any and all claims asserted by Claimants, Harold and Jill Lewis, are denied.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Charles A. Hessler's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Hessler must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Parties shall bear their own costs, including attorneys' fees, except as specified herein.
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	= \$ 600.00
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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 to this proceeding and is assessed the following fees:

Member surcharge	= \$ 3,350.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,500.00</u>
Total fees	= \$ 9,600.00

#### **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:

One (1) Pre-hearing session(s) with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: August 11, 2003 1 session	

Eight (8) Hearing sessions @ \$1,200.00 = \$ 9,600.00

Hearing Dates:	March 8, 2004	2 sessions
	March 9, 2004	2 sessions
	March 10, 2004	2 sessions
	March 11, 2004	2 sessions

Total Forum Fees = \$10,800.00

1. The Panel has assessed 50% of the total forum fees in the amount of \$5,400.00 jointly to Claimants, Harold and Jill Lewis.
2. The Panel has assessed 50% of the total forum fees in the amount of \$5,400.00 jointly and severally to Respondents, A.G. Edwards & Sons, Inc. and Charles A. Hessler.

**Fee Summary**

1. Claimants, Harold and Jill Lewis, are solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 5,400.00
Total Fees	= \$ 6,000.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 4,200.00

2. Respondent, A.G. Edwards & Sons, Inc. is solely liable for:

Member Fees	= \$ 9,600.00
Less payments	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents, A.G. Edwards & Sons, Inc. and Charles A. Hessler, are jointly and severally liable for:

Forum Fees	= \$ 5,400.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,400.00

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

ARBITRATION PANEL

Neil N. Bernstein	-	Public Arbitrator, Presiding Chairperson
D. Richard Dennis	-	Public Arbitrator
Lynn D. Newton	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Neil N. Bernstein  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
3/31/04  
Signature Date

\_\_\_\_\_  
D. Richard Dennis  
Public Arbitrator

\_\_\_\_\_  
3/31/04  
Signature Date

\_\_\_\_\_  
Lynn D. Newton  
Non-Public Arbitrator

\_\_\_\_\_  
4/1/04  
Signature Date

\_\_\_\_\_  
4/2/04  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 03-00524  
Award Page 6

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Public Arbitrator, Presiding Chairperson

*3/31/2004*  
Signature Date

D. Richard Dennis  
Public Arbitrator

Signature Date

Lynn D. Newton  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

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Award Page 6

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Signature Date



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Public Arbitrator

3-31-04

Signature Date

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Public Arbitrator

Signature Date

Lynn D. Newton  
Non-Public Arbitrator

*Lynn D. Newton*

Signature Date

4/1/04

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NASD Dispute Resolution  
Arbitration No. 03-00524  
Award Page 6