

**AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Name of Claimant

Jean L. Leck

and

03-00845
Phoenix, Arizona

Name of Respondents

A.G. Edwards & Sons, Inc.
John Lewis Tate

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

REPRESENTATION OF PARTIES

Jean L. Leck ("**Claimant**") was represented by Robert D. Mitchell, Esq., Mitchell Law Offices, Phoenix, Arizona.

A.G. Edwards & Sons, Inc. ("**Respondent AG Edwards**") and John Lewis Tate ("**Respondent Tate**") (collectively as "**Respondents**") were represented by David M. Minnick, Esq., A.G. Edwards & Sons, Inc., St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about February 4, 2003. First Amended Statement of Claim and Demand for Arbitration was filed on or about March 31, 2003. Submission Agreement of Claimant Jean L. Leck was signed on January 31, 2003 by Robert D. Mitchell, her attorney.

Statement of Answer was filed by Respondents A.G. Edwards & Sons, Inc. and John Lewis Tate on or about April 1, 2003. Submission Agreement of Respondent A.G. Edwards & Sons, Inc. was signed on March 31, 2003 by Stephen G. Sneeringer. Submission Agreement of Respondent John Lewis Tate was signed on February 28, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: negligence; suitability violations; fraud under the Arizona Securities Act; Federal Securities fraud; breach of fiduciary duty; breach of contract; common law fraud and intentional misrepresentation; negligent misrepresentation; and failure to supervise. Claimant specifically stated:

Unfortunately for Ms. Leck, Respondent Tate's investment focus was solely on technology issues. Ms. Leck's prior account manager had already concentrated Ms. Leck's account in technology stocks. Although Ms. Leck sought Mr. Tate's advice and guidance to diversify and restructure her portfolio, Mr. Tate never gave such advice. As Ms. Leck's portfolio declined, she asked Mr. Tate several times about selling various positions in the account. Mr. Tate always resisted her inquiries about selling the technology positions, and encouraged her that her portfolio was well placed. He was convinced that technology issues would do well in the long run, and apparently was not concerned that Ms. Leck's portfolio was highly concentrated in equities, particularly in the technology sector. All of the rest of the investment alternatives available to Respondent Tate, as described in his brochure, such as prudent financial planning, were largely ignored by him. Ms. Leck had no particular affinity for technology stocks or any other stocks and would have completely followed Mr. Tate's advice if he had suggested she reduce her technology and equities concentration in her accounts.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

Claimant's Prudential account came to Edwards fully invested and with a substantial concentration in technology-oriented companies. This emphasis on technology continued during the time she dealt with the Respondents, and was based upon her desire to stay substantially invested in companies with a technology and/or scientific focus. Claimant repeatedly expressed her desire to remain in technology-oriented companies and in "her stocks". Claimant's existing positions (none of which were recommended to her by respondents) and her continuing desire to remain invested in them and in similar companies resulted in the decline in the value of her accounts.

RELIEF REQUESTED

Claimant requested an award in the amount of

- A. Compensatory damages for the losses in her portfolio of approximately \$268,817.
- B. Interest and/or lost opportunity damages as of the date of the arbitration hearing.
- C. Recovery of any commissions, margin interest, and other fees charged by the Respondents on Claimant's investments.
- D. Recovery of Claimant's filing fees and such other costs and expenses as may be incurred in bringing this arbitration.
- E. Attorney's fees pursuant to A.R.S. §§12-341.01 and 44-2001.
- F. Punitive damages in an amount not less than \$500,000.00.
- G. Such other relief in favor of the Claimant as the Arbitrators deem just and appropriate under the circumstances.

Respondents requested that the Statement of Claim be dismissed in its entirety and that the Respondents be awarded their costs and expenses incurred in defending this action, including reasonable attorneys' fees, and that the panel enter an order that all references to this claim be expunged from Respondent John Tate's permanent records with the Central Registration Depository.

OTHER ISSUES CONSIDERED & DECIDED

At the conclusion of claimant's case in chief, Respondents asserted a Motion for Directed Verdict. After considering the pleadings, evidence presented and the arguments of the parties, the Arbitration Panel denied the Motion.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claimant asserted in this matter shall be and hereby are dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent John Lewis Tate'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 John Lewis Tate must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is A.G. Edwards & Sons, Inc.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	4,000.00
Total Member Fees	\$	<u>7,000.00</u>

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

4 Hearing sessions	X	1,200.00	\$	4,800.00
April 20, 2004	2 sessions			
April 21, 2004	2 sessions			
Total Forum Fees			\$	<u>4,800.00</u>

The Arbitration Panel has assessed \$4,800.00 of the forum fees to A.G. Edwards & Sons, Inc.

NASD Dispute Resolution
 Arbitration No. 03-00845
 Award Page 5 of 5

Fee Summary

Claimant, Jean L. Leck, shall be and hereby is liable for:

Initial Filing Fee	= \$	375.00
Total Fees	= \$	375.00
<u>Less payments</u>	= \$	-1,575.00
Balance to be refunded by NASD Dispute Resolution	= \$	1,200.00

Respondent, A.G. Edwards & Sons, Inc., shall be and hereby is liable for:

Member Fees	= \$	7,000.00
<u>Forum Fees</u>	= \$	4,800.00
Total Fees	= \$	11,800.00
<u>Less payments</u>	= \$	-3,000.00
Balance Due NASD Dispute Resolution	= \$	8,800.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Jeffrey B. Messing, Esq. - Public Arbitrator, Presiding Chair


John V. Marian - Public Arbitrator

William Richard Smith - Non-Public Arbitrator


Concurring Arbitrators:


 Jeffrey B. Messing, Esq.
 Public Arbitrator, Presiding Chair

7/26/04
 Signature Date


 John V. Marian
 Public Arbitrator

 Signature Date


 William Richard Smith
 Non-Public Arbitrator

 Signature Date

NASD Dispute Resolution
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 Award Page 5 of 5

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William Richard Smith
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Non-Public Arbitrator

4-28-04
Signature Date