

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Stephen Black

Case Number: 03-01111

Name of the Respondents
A.G. Edwards & Sons, Inc. and
James C. Keene

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Public Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimant Stephen Black, hereinafter referred to as "Claimant": Charles M. Hamilton, Esq. of the Law Offices of French & Hamilton, located in Dallas, Texas.

Respondents A.G. Edwards & Sons, Inc. ("A.G. Edwards") and James C. Keene ("Keene"), hereinafter collectively referred to as "Respondents": William S. Port, Esq. of A.G. Edwards & Sons, Inc., located in St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed: February 11, 2003.

Claimant signed the Uniform Submission Agreement: May 7, 2003.

Joint Statement of Answer filed by Respondents: July 2, 2003.

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

Respondent Keene signed the Uniform Submission Agreement: June 2, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: securities fraud for violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5; negligence; breach of fiduciary duty; violation of the standard of due care as set forth in the NASD rules; securities fraud for violation of the Texas Securities Act; violation of the Texas Deceptive Trade Practices Act; statutory and common law fraud; negligent supervision; and breach of contract. These causes of action related

from Respondents recommendations that Claimant purchase or hold risky, volatile, under-capitalized, illiquid and/or high-risk securities despite Claimant's stated objectives of "Safety of Principal" and "Growth."

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

1. Claimant is barred from recovering from A.G. Edwards under the doctrines of ratification, account stated, estoppel, waiver and laches because A.G. Edwards relied upon the silence of the Claimant when he failed to notify Respondents promptly after receipt of written confirmations, monthly statements and other documents setting forth the transactions in his account;
2. Claimant failed to act promptly and with due diligence to mitigate his damages after Claimant knew of should have known of the alleged acts and omissions of which Claimant complains;
3. By failing to exercise the degree of care over his affairs and investments which an ordinarily prudent investor would exercise, Claimant caused or contributed to cause the alleged damages of which Claimant complains and is barred by his contributory negligence from recovering damages from A.G. Edwards;
4. The Claimant was aware from the outset of the risks of profit and loss associated with investing in securities, and voluntarily assumed the risks;
5. The damages allegedly suffered by Claimant were caused, if at all, by unforeseeable market factors and conditions effecting the value of securities in Claimant's account, for which A.G. Edwards is not liable or responsible; and,
6. The Statement of Claim and each count thereof, fails to state a claim against Edwards upon which relief can be granted.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages

For the monetary losses in his account

Punitive Damages

Unspecified in claim, but at least three times the actual monetary damages awarded

Interest

Pre- and post-judgment

Attorneys' Fees

Pursuant to the causes of action asserted under the various statutes permitting the recovery of reasonable attorneys' fees

Other Costs

Unspecified in claim

Other Monetary/Non-Monetary Relief if any:

General relief, at law or in equity, to which Claimant might be justly entitled

Respondents requested that the Panel issue an order dismissing Claimant's Statement of Claim in its entirety, awarding Respondents their costs associated with the defense of this matter including reasonable attorneys' fees, and such other and further relief as the Panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

1. The claims asserted by Claimant Stephen Black is dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated herein;
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent James C. Keene'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 James C. Keene must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and,
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 = \$ 250.00

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 and the following member fees are assessed:

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with Panel @ \$1,000.00	= \$ 1,000.00
Pre-hearing conference: November 20, 2003 1 session	
Four (4) Hearing sessions @ \$1,000.00	= \$ 4,000.00
Hearing Dates: June 15, 2004 2 sessions	
June 16, 2004 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 5,000.00

The Panel has assessed \$5,000.00 of the forum fees to Respondent A.G. Edwards & Sons, Inc.

SEE SUMMARY

Claimant Stephen Black is solely liable for:

Initial Filing Fee	= \$ 250.00
<u>Less payments</u>	<u>= \$ 2,675.00</u>
Balance Refunded by NASD Dispute Resolution	= \$ 2,425.00

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

Member Fees	= \$ 4,450.00
<u>Forum Fees</u>	<u>= \$ 5,000.00</u>
Total Fees	= \$ 9,450.00
<u>Less payments</u>	<u>= \$ 4,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,000.00

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

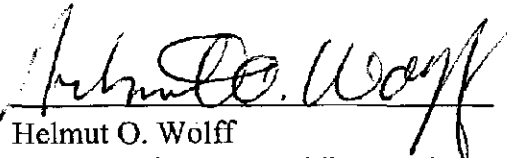
ARBITRATION PANEL

Helmut O. Wolff - Public Arbitrator, Presiding Chairperson

Charles P. Aberg, Esq. - Public Arbitrator

William Richard Smith - Non-Public Arbitrator

Concurring Arbitrators' Signatures



Helmut O. Wolff

Public Arbitrator, Presiding Chairperson

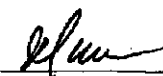
JULY 1, 2004
Signature Date

Charles P. Aberg, Esq.
Public Arbitrator

Signature Date

William Richard Smith
Non-Public Arbitrator

Signature Date

7/7/04 
Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson

Signature Date

Charles P. Aberg

Charles P. Aberg, Esq.

Public Arbitrator

7/5/04
Signature Date

William Richard Smith

Non-Public Arbitrator

Signature Date

7/7/04 *WRS*

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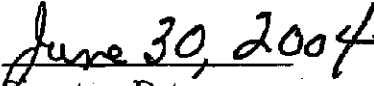
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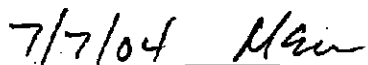
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