

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

The Urbani Family Trust U/A dated 12/31/84, Claimant v. A.G. Edwards & Sons, Inc. and Michael L. Tahmoush, Respondents

Case Number: 03-01659

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimant:

Mitchell S. Ostwald, Esq.
Sacramento, California

For Respondents:

Daryl S. Landy, Esq.
Amy M. Kott, Esq.
Steefel, Levitt & Weiss
San Francisco, California

CASE INFORMATION

Statement of Claim filed: March 6, 2003

Claimant's Uniform Submission Agreement signed: March 6, 2003

Joint Statement of Answer filed by Respondents A.G. Edwards & Sons, Inc. ("A.G. Edwards") and Michael L. Tahmoush: May 15, 2003

Respondent A.G. Edwards' Uniform Submission Agreement signed: May 12, 2003

Respondent Michael L. Tahmoush's Uniform Submission Agreement signed: April 14, 2003

CASE SUMMARY

Claimant alleged the following claims with respect to investments in CMGI stock: 1) Breach of Fiduciary Duty; 2) Fraud; 3) Constructive Fraud (Civil Code Section 1573); 4) Failure to Supervise; 5) Elder Abuse; 6) Unfair or Deceptive Practices Against Senior Citizens; and 7) Violation of Federal and State Securities Laws; NASD Rules of Fair Practice and NYSE Rules.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in an amount according to proof, but not less than \$348,903.00;
2. Disgorgement and restitution of all embedded commissions of \$47,092.00 and broker's commission and fees of \$15,617.00, totaling \$62,709.00;
3. Disgorgement and restitution of all earnings, profits, compensation and benefits received by the Respondents as a result of their unlawful acts and practices in an amount according to proof;
4. Lost opportunity cost of what the purchase of \$981,903.00 would have been if suitably invested;
5. Attorney's fees and costs;
6. Pre- and post judgment interest at the legal rate;
7. Punitive damages in an amount according to proof; and
8. Such other and further relief as the Panel may deem just and proper.

Respondents requested:

1. That Claimant's Statement of Claim be dismissed in its entirety;
2. That Respondents be awarded their costs of this proceeding, including their forum fees; and
3. That Respondents be granted such other relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On March 19, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On May 22, 2003, Respondents' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

At the close of hearing, Claimant moved that the Award provide for a disciplinary referral of the broker named in this matter. The Panel has declined to make a disciplinary referral in this matter.

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims by Claimant, including the claim for punitive damages, are dismissed. The Panel found that while it appears that no rules or regulations were violated, there was sloppy record keeping and non-compliance with the firm's operations manual.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$300.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, A.G. Edwards is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	=	\$450.00
Pre-hearing conference: October 3, 2003 1 session		

(4) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$4,500.00

Pre-hearing conferences:	July 22, 2003	1 session
	September 8, 2003	1 session
	September 10, 2003	1 session
	September 18, 2003	1 session

(12) Hearing sessions @ \$1,125.00/session = \$13,500.00

Hearing:	October 7, 2003	3 sessions
	October 8, 2003	3 sessions
	October 9, 2003	3 sessions
	October 10, 2003	3 sessions

Total Forum Fees = **\$18,450.00**

The Panel assessed the \$18,450.00 in forum fees jointly and severally to Respondents A.G. Edwards and Tahmoush.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

The parties did not incur administrative costs.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less Payments</u>	= \$ (1,425.00)
Refund Due Claimant	= \$ (1,125.00)

2. Respondent A.G. Edwards is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less Payments</u>	= \$ (5,200.00)
Balance Due NASD-DR	= \$ 0.00

3. Respondents A.G. Edwards and Michael L. Tahmoush are charged jointly and severally with the following fees and costs:

Forum Fees	= \$18,450.00
<u>Less Payments</u>	= \$ (0.00)
Balance Due NASD-DR	= \$18,450.00

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

ARBITRATION PANEL

Daniel M. Yamshon, Esq.	-	Public Arbitrator, Presiding Chair
Lester Friedman, Esq.	-	Public Arbitrator
Joseph H. Sturdivant	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Daniel M. Yamshon, Esq.
Chair, Public Arbitrator

Signature Date

Lester Friedman, Esq.
Public Arbitrator

Signature Date

Joseph H. Sturdivant
Non-Public Arbitrator

Signature Date

Date of Service

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ARBITRATION PANEL

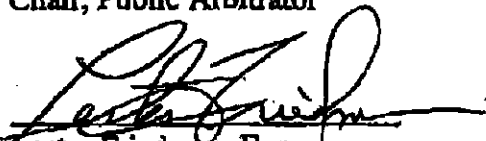
Daniel M. Yamshon, Esq.
Lester Friedman, Esq.
Joseph H. Sturdivant

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

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Chair, Public Arbitrator

Signature Date


Lester Friedman, Esq.
Public Arbitrator


Signature Date

Joseph H. Sturdivant
Non-Public Arbitrator

Signature Date

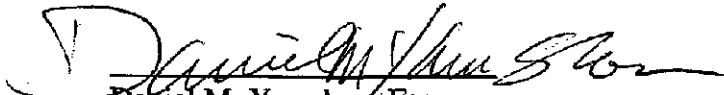
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Daniel M. Yamshon, Esq.
Chair, Public Arbitrator

10/31/03
Signature Date

Lester Friedman, Esq.
Public Arbitrator

Signature Date

Joseph H. Sturdivant
Non-Public Arbitrator

Signature Date

Date of Service