

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Gail S. Cassily

Case Number: 03-02104

Name of the Respondents  
A.G. Edwards & Sons, Inc. and  
Edward J. Costigan, Jr.

Hearing Site: St. Louis, Missouri

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**NATURE OF DISPUTE**

Customer vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Lawrence Goldberg and J. Christopher Wehrle, Esq. of the law firm Goldberg Katz, LLC, located in St. Louis, Missouri, represented Gail S. Cassily, hereinafter referred to as "Claimant."

William S. Port, Esq. of A.G. Edwards & Sons, Inc., located in St. Louis, Missouri, represented the Respondents, A.G. Edwards & Sons, Inc. ("Edwards") and Edward J. Costigan, Jr. ("Costigan"), hereinafter collectively referred to as "Respondents."

**CASE INFORMATION**

Statement of Claim filed on or about March 24, 2003. Claimant, Gail S. Cassily, signed the Uniform Submission Agreement on January 23, 2003. Claimant filed an Amended Statement of Claim on or about April 15, 2003.

Statement of Answer filed by Respondents, Edwards and Costigan, on or about April 29, 2003. Respondent, A.G. Edwards, signed the Uniform Submission Agreement on April 29, 2003. Respondent, Costigan, signed the Uniform Submission Agreement on April 7, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: unauthorized trading, suitability, negligence and failure to supervise. The causes of action relate to the following stocks: Analog Devices, Inc.; Ariba, Inc.; Aspect Development, Inc.; Cabletron Systems, Inc.; EMC Corporation; Knight Trading Group, Inc.; Leap Wireless International, Inc.; Linear Technology, Inc.; Linear Technology, Inc.; Medtronic, Inc.; Peoplesoft, Inc.; Tellabs, Inc.; Worldcom, Inc.; I2 Technologies, Inc.; LSI Logic Corp.; Tyco International, LTD; ADC Telecommunications, Inc.; Avaya, Inc.; Kemet Corp.; Juniper Networks, Inc.; Taiwan Semiconductor MFG, LTD ADR; 12

Technologies, Inc.; JDC Uniphase Corp.; MC Data Corp.; Certegy, Inc.; Enterasys Networks, Inc.; Zimmer Holdings, Inc.; Redback Networks, Inc.; and Riverstone Networks, Inc. Claimant asserted that these stocks were speculative and aggressive in nature and were unsuitable to Claimant's conservative investment and income objectives.

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

1. As a result of Claimant's failure to notify Edwards of the alleged acts and omissions of which Claimant now complains, Claimant is barred from recovering from Edwards under the doctrines of ratification, account stated, estoppel, waiver and laches because Edwards relied upon the aforesaid silence of the Claimant.
2. Claimant failed to act promptly and with due diligence to mitigate her damages after Claimant knew or should have known of the alleged acts and omission of which Claimant complains. To the extent Claimant alleges damages were sustained after such time, Claimant is therefore barred from recovering such damages. In no event is Claimant entitled to recover damages sustained after Claimant's account with Edwards was closed.
3. By failing to exercise the degree of care over her affairs and investments which an ordinarily prudent investor would exercise, Claimant caused or contributed to cause the alleged damages of which Claimant complains herein and is thus barred by her contributory negligence from recovering such alleged damages from Edwards.
4. The Claimant was aware from the outset of the risks of profit and loss associated with investing in securities, and voluntarily assumed such risks. The Claimant's knowing and voluntary assumption of such risks was the sole and proximate cause of her alleged damages.
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 Edwards is not liable or responsible.
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	\$5,000,000.00
Punitive Damages	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondents Edwards and Costigan, requested that Claimant's Statement of Claim be dismissed in its entirety, award Respondents their costs and fees associated with the defense in this matter, including attorney's 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. Any and all claims asserted by Claimant, Gail S. Cassily, are denied.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Edward J. Costigan, Jr.'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, Edward J. Costigan, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Parties shall bear their own costs and 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 is a party and is assessed the following fees:

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

**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 with Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference:      October 7, 2003      1 session	
Three (3) Hearing sessions @ \$1,200.00	= \$3,600.00
Hearing Dates:      May 11, 2004      2 sessions	
May 12, 2004      1 session	
<hr/> Total Forum Fees	<hr/> = \$4,800.00

1. The Panel has assessed 100% of the total forum fees in the amount of \$4,800.00 to Claimant, Gail S. Cassily.

**Fee Summary**

1. Claimant, Gail S. Cassily, is solely liable for:	
Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$4,800.00</u>
Total Fees	= \$5,400.00
<u>Less payments</u>	<u>= \$1,800.00</u>
Balance Due NASD Dispute Resolution	= \$3,600.00
2. Respondent, A.G. Edwards, Inc. is solely liable for:	
Member Fees	= \$8,550.00
<u>Less payments</u>	<u>= \$8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

George T. Mehan, Jr.	-	Public Arbitrator, Presiding Chairperson
Richard L. Puhl	-	Public Arbitrator
Mark E. Kessinger	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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George T. Mehan, Jr.  
Public Arbitrator, Presiding Chairperson

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5-18-04  
Signature Date

\_\_\_\_\_  
Richard L. Puhl  
Public Arbitrator

\_\_\_\_\_  
5-19-04  
Signature Date

\_\_\_\_\_  
Mark E. Kessinger  
Non-Public Arbitrator

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

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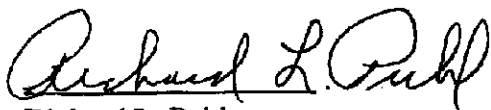
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