

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

K-Mo Properties, Ltd., and
Kay Harris, Individually and as Trustee for
K-Mo Properties, Ltd.

Case Number: 03-02526

Name of the Respondents

A.G. Edwards & Sons, Inc.;
Lois M. Powell;
Richard Leslie Terrill; and,
Mark W. Engelbrecht

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Public Customers v. Member Firm and Associated Persons

REPRESENTATION OF PARTIES

Claimants K-Mo Properties, Ltd. ("K-Mo"), and Kay Harris ("Harris"), Individually and as Trustee for K-Mo Properties, Ltd., hereinafter collectively referred to as "Claimants": Robert L. Tobey, Esq. of the firm of Johnston Tobey, P.C., located in Dallas, Texas.

Respondents A.G. Edwards & Sons, Inc. ("AGE"), Lois M. Powell ("Powell"), Richard Leslie Terrill ("Terrill"), and Mark W. Engelbrecht ("Engelbrecht"), hereinafter collectively referred to as "Respondents": William S. Port, Esq. of A.G. Edwards & Son, Inc. of St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed: April 7, 2003

Claimants signed the Uniform Submission Agreement: April 2, 2003.

Joint Statement of Answer filed by Respondents on: June 11, 2003.

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

Respondent Powell signed the Uniform Submission Agreement: May 23, 2003.

Respondent Terrill signed the Uniform Submission Agreement: April 29, 2003.

Respondent Engelbrecht signed the Uniform Submission Agreement: May 6, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: violation of the Federal and State securities laws; violation of the rules and regulations of the NASD and securities exchanges; common law fraud; breach of fiduciary duty; breach of conduct; violation of the Texas Deceptive Trade Practice-Consumer Protection Act; violation of the Texas Business & Commerce Code; unsuitability; and failure to supervise. The causes of action related to investments in mutual funds, including several investments in aggressive science and technology funds.

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

1. Claimants are barred from recovering from AGE under the doctrines of ratification, account stated, estoppel, waiver and laches because AGE relied on Claimants' silence and failure to complain after receiving written confirmations, monthly statements and other documents;
2. 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 they complain and are barred from recovering such damages;
3. By failing to exercise the degree of care over their affairs and investments which ordinarily prudent investors would exercise, Claimants caused or contributed to cause the alleged damages of which Claimants complain herein and are thus barred by their contributory negligence from recovering such alleged damages from AGE;
4. Claimants were aware from the outset of the risks of profit and loss associated with investing in securities, and voluntarily assumed such risks. Claimants' knowing and voluntary assumption of such risks was the sole and proximate cause of their alleged damages;
5. The damages allegedly suffered by Claimants were caused, if at all, by unforeseeable market factors and conditions effecting the value of securities in Claimants' account, for which AGE is not liable or responsible; and,
6. The Statement of Claim and each count thereof, fails to state a claim against AGE upon which relief can be granted.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages (K-Mo)	\$ 521,266.00
Compensatory Damages (Harris)	\$ 305,461.00
Punitive Damages	3 times actual damages
Treble Damages	Pursuant to the Texas Deceptive Trade Practices Act
Interest	Pre- and post-award pursuant to Texas Law

Attorneys' Fees
Other Costs
Other Monetary/Non-Monetary Relief if any:

Pursuant to Texas state law
As determined by the Panel
As determined by the Panel

Respondents requested that Claimants' Statement of Claim be dismissed in its entirety; that Respondents be awarded their costs and fees associated with the defense of this matter including reasonable attorneys' fees; and for such other and further relief as the panel may deem just and proper.

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 Statement of Claim filed by Claimants K-Mo Properties, Ltd. and Kay Harris, Individually and as Trustee for K-Mo Properties, Ltd., against Respondents A.G. Edwards & Sons, Inc., Lois M. Powell, Richard Leslie Terrill, and Mark W. Engelbrecht 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 Respondents Lois M. Powell's, Richard Leslie Terrill's, and Mark W. Engelbrecht'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, Respondents Lois M. Powell, Richard Leslie Terrill, and Mark W. Engelbrecht 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 or treble 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

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

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 @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: December 23, 2003 1 session	
Four (4) Hearing sessions @ \$1,200.00	= \$ 4,800.00
Hearing Dates: July 13, 2004 2 sessions	
July 14, 2004 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 6,000.00

The Panel has assessed \$3,000.00 of the forum fees, jointly and severally, to Claimants K-Mo Properties, Ltd. and Kay Harris, Individually and as Trustee for K-Mo Properties, Ltd., and has assessed the remaining \$3,000.00 of the forum fees to Respondent A.G. Edwards & Sons, Inc.

SEE SUMMARY

Claimants K-Mo Properties, Ltd. and Kay Harris, Individually and as Trustee for K-Mo Properties, Ltd., are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 3,000.00
<hr/> Total Fees	<hr/> = \$ 3,600.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 1,900.00

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

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 3,000.00
<hr/> Total Fees	<hr/> = \$11,550.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 4,550.00

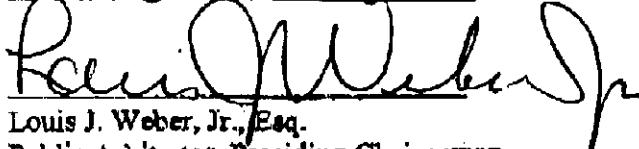
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All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Louis J. Weber, Jr., Esq. - Public Arbitrator, Presiding Chairperson
William Ben Utley, III - Public Arbitrator
Todd R. Gough - Non-Public Arbitrator

Concurring Arbitrators' Signatures


Louis J. Weber, Jr., Esq.
Public Arbitrator, Presiding Chairperson

8/7/04
Signature Date

William Ben Utley, III
Public Arbitrator

Signature Date

Todd R. Gough
Non-Public Arbitrator

Signature Date

8/10/04 
Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson

Signature Date



William Ben Utley, III
Public Arbitrator

AUG 10, 2004

Signature Date

Todd R. Gough
Non-Public Arbitrator

Signature Date

8/10/04 

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Non-Public Arbitrator

8-10-04
Signature Date

8/10/04 RLW
Date of Service (For NASD Dispute Resolution office use only)