
**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
James H. McGrath

Case Number: 03-02690

Name of the Respondents
A.G. Edwards & Sons, Inc. and
Thomas L. Pape

Hearing Site: St. Louis, Missouri

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

REPRESENTATION OF PARTIES

Claimant, James H. McGrath, hereinafter referred to as "Claimant": Steven W. Koslovsky, Esq., located in Maryland Heights, Missouri.

Respondents, A.G. Edwards & Sons, Inc. ("Edwards") and Thomas L. Pape ("Pape"), hereinafter collectively referred to as "Respondents": Nuviah Shirazi, Esq. of A.G. Edwards & Sons, Inc., located in St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on April 7, 2003.

Claimant signed the Uniform Submission Agreement on April 7, 2003.

Statement of Answer filed by Respondents Edwards and Pape on June 18, 2003.

Respondent Edwards signed the Uniform Submission Agreement on June 16, 2003.

Respondent Pape signed the Uniform Submission Agreement on May 9, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: failure to supervise, suitability, negligence and misrepresentations. The causes of action relate to order execution of various stocks including, Merck & Co., Cisco, First Chicago Corp., Motorola and Best Buy. Claimant asserted that the options trading strategy recommended by Respondents were high-risk and unsuitable to Claimant's investment objectives.

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

1. Claimant did not register with Respondents timely complaints after receiving statements concerning the activity in his accounts. Claimant is barred from recovering from Respondents.

2. Claimant's failure to timely object to the transactions is deemed to be a ratification, waiver and estoppel of Claimant's right to recovery.
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 herein and is thus barred by his own contributory negligence and/or comparative fault from recovering such alleged damages.
4. Claimant was aware from the outset of the risks of profit and losses associated with investing in securities and voluntarily assumed such risks. Claimant's knowing and voluntary assumption of such risks was the sole and proximate cause of his alleged damages.
5. The damages allegedly suffered by Claimant were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in Claimant's accounts for which Respondents are not likely or responsible.
6. To the extent Claimant is seeking recovery of attorney's fees, costs and interest, such request fails to state a claim for which relief may be granted, as there is no legal basis for the recovery of same.
7. Claimant failed to act promptly and with due diligence to mitigate his damages after he knew or should have known of the alleged acts or omissions of which he complains. To the extent Claimant alleges damages sustained after such time, Claimant is barred from recovering such damages.
8. All of the transactions in Claimant's accounts were executed with his express authorization. Accordingly, Claimant is barred from recovery in this action.
9. Claimant has failed to file his cause of action in a timely fashion within the time limitations governed by state and federal law.
10. Claimant's cause of action fails to state a claim for which relief may be granted.

RELIEF REQUESTED

Claimant requested \$250,000.00 in compensatory damages; punitive damages in the amount of \$250,000.00 and costs.

Respondents, Edwards and Pape, requested that all claims be dismissed with prejudice and that Respondents be awarded all costs, reasonable attorney fees and such other relief deemed 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. Respondents, A.G. Edwards & Sons, Inc. and Thomas L. Pape, are jointly and severally liable for and shall pay to Claimant, James H. McGrath, the sum of \$39,212.00 as compensatory damages, plus interest at the rate of 5%

per annum to accrue from June 30, 2001 until the date the Award is paid in full.

2. Respondents, A.G. Edwards & Sons, Inc. and Thomas L. Pape, are jointly and severally liable for and shall pay to Claimant, James H. McGrath, the sum of \$5,000.00 as attorney's fees. In deciding to award attorney's fees, the Panel considered Mo. Rev. Statute § 409.5-509(b)(1) 2003 and Mo. Rev. Statute § 409.411(j) 1967 and determined that authority existed for an award of attorney's fees to the Claimant.
3. Respondents, A.G. Edwards & Sons, Inc. and Thomas L. Pape, are jointly and severally liable for and shall pay to Claimant, James H. McGrath, the sum of \$300.00 as reimbursement for the NASD Dispute Resolution non-refundable filing fee.
4. Except as otherwise specified herein, parties shall bear their own costs, including all other attorneys' fees.
5. 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	= \$ 300.00
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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 & Sons, Inc. is a party and is assessed the following fees:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

July 27-29, 2004, adjournment by Respondents	= \$ 1,125.00
October 27-29, 2004, adjournment by Claimant	= \$ 1,125.00
	(waived by Panel)

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 @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: February 19, 2004 1 session	

Five (5) Hearing sessions @ \$1,125.00 = \$ 5,625.00

Hearing Dates: July 13, 2005 2 sessions
July 14, 2005 2 sessions
July 15, 2005 1 session

Total Forum Fees = \$ 6,750.00

1. The Panel assessed 100% of the total forum fees in the amount of \$6,750.00 jointly and severally to Respondents, A.G. Edwards & Sons, Inc. and Thomas L. Pape.

EEE SUMMARY

1. Claimant, James J. McGrath, is solely liable for:

Initial Filing Fee = \$ 300.00
Less payments = \$ 1,425.00
Refund Due from NASD Dispute Resolution = \$ 1,125.00

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

Member Fees = \$ 5,200.00
Less payments = \$ 5,200.00
Balance Due NASD Dispute Resolution = \$ 0.00

3. Respondents, A.G. Edwards & Sons, Inc. and Thomas L. Pape, are jointly and severally liable for:

Postponement Fees = \$ 1,125.00
Forum Fees = \$ 6,750.00
Total Fees = \$ 7,875.00
Less payments = \$ 2,375.00
Balance Due NASD Dispute Resolution = \$ 5,500.00

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

ARBITRATION PANEL

Joseph R. Soraghan, Esq. - Public, Presiding Chairperson
Richard L. Puhl - Public Arbitrator
Lynn Doug Newton - Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Joseph R. Soraghan, Esq.
Joseph R. Soraghan, Esq.
Public Arbitrator, Presiding Chairperson

7/21/05
Signature Date

/s/ Richard L. Puhl
Richard L. Puhl
Public Arbitrator

7/18/05
Signature Date

NASD Dispute Resolution

Arbitration No. 03-02690

Award Page 5 of 5

/s/ Lynn Doug Newton

Lynn Doug Newton

Non-Public Arbitrator

7/19/05

Signature Date

7/21/05

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

NASD Dispute Resolution
 Arbitration No. 03-02890
 Award Page 4 of 5

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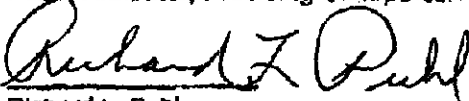
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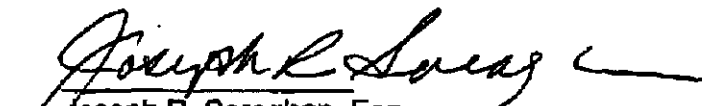
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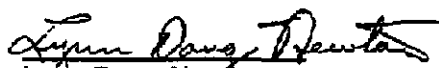
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