
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Thomas G. Butler, Trustee of the
Thomas G. Butler Amended and Restated
Revocable Trust

Case Number: 03-02719

Names of the Respondents

A.G. Edwards & Sons, Inc.
John Umber

Hearing Site: Orlando, Florida

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

REPRESENTATION OF PARTIES

For Thomas G. Butler, Trustee of the Thomas G. Butler Amended and Restated Revocable Trust, hereinafter referred to as "Claimant": James Richard Hooper, Esq., Hooper & Weiss, L.L.C., Orlando, Florida.

For Respondent A.G. Edwards & Sons, Inc. ("Edwards"): Dennis J. Capriglione, Litigation Counsel with A.G. Edwards & Sons, Inc., St. Louis, Missouri.

Respondent John Umber ("Umber") appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: April 14, 2003.

Claimant signed the Uniform Submission Agreement on: March 19, 2003.

Statement of Answer and Motion for More Definite Statement of Claim filed by Respondents Edwards and Umber on or about: June 17, 2003.

Respondent Edwards signed the Uniform Submission Agreement on: June 17, 2003.

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

CASE SUMMARY

Claimant alleged the following causes of action: 1) unsuitability; 2) violation of NASD Rule 2310; 3) violation of NYSE Rule 405; 4) violation of "Know Your Securities"; 5) unauthorized trading; 6) breach of contract; 7) breach of fiduciary duty – the duties of care, loyalty, full disclosure, fair dealing & good faith; 8) violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5; 9) common law fraud; 10) violations of SRO Rules; 11)

negligence; 12) failure to supervise; and 13) *respondeat superior*. The causes of action relate to investments in equity based growth and income funds, including but not limited to, Income Fund of America, Eaton Vance Growth Fund, and Alliance Muni Income Fund.

Unless specifically admitted in their Statement of Answer, Respondents Edwards and Umber denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of \$733,377.62; 2) disgorgement of all commissions, fees and other charges paid by Claimant to Respondents Edwards and Umber; 3) interest; 4) punitive damages; 5) attorneys' fees; 6) costs and expenses of this proceeding; and 7) such other and further relief as the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents Edwards and Umber requested: 1) dismissal, with prejudice, of all claims asserted by Claimant; 2) assessment of the costs of this proceeding to Claimant; and 3) an order directing expungement of all reference to the above captioned arbitration from Respondent Umber's registration records maintained by the NASD Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

On or about June 17, 2003, Respondents Edwards and Umber filed their Statement of Answer and Motion for More Definite Statement of Claim. On or about October 31, 2003, the Panel heard argument on the motion. On or about November 12, 2003, the Panel denied the motion.

On or about September 15, 2004, Claimant filed with NASD Dispute Resolution a notice of settlement and request to postpone the hearing scheduled for September 20 - 23, 2004 and for waiver of fees. On or about September 18, 2004, the Panel granted the postponement, waived the postponement fee in the amount of \$1,200.00, and denied waiver of the three-day cancellation fees. Upon further consideration, the Panel determined to waive the three-day cancellation fees.

On or about September 15, 2004, Respondents Edwards and Umber submitted a proposed Stipulated Award wherein the parties requested expungement of all reference to the above captioned arbitration from Respondent Umber's registration records maintained by the CRD. On or about October 24, 2004, the Panel denied the request for expungement.

On or about November 9, 2004 Respondents Edwards and Umber filed their request for reconsideration. On or about December 15, 2004, the Panel denied the request for expungement but granted leave for the parties to present oral argument at a telephonic pre-hearing conference before the Panel.

On or about January 6, 2005, Respondent Umber requested a pre-hearing conference before the Panel. On or about March 2, 2005, the Panel held a pre-hearing conference and thereafter granted Respondent Umber's request for expungement.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a

handwritten, signed Stipulated Award may be entered.

AWARD

After considering the pleadings and the request for the entry of a Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents Edwards and Umber are hereby dismissed, with prejudice.
2. The Panel recommends expungement of all references to the above-captioned arbitration proceeding from Respondent Umber's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Umber must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. All parties shall bear their respective costs, including attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 375.00
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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, Respondent Edwards is a member firm and a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$4,000.00</u>
Total Member Fees	= \$7,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no adjournments requested during these proceedings for which fees were assessed.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 per session	= \$2,400.00
Pre-hearing conferences: October 31, 2003	1 session
March 2, 2005	1 session

Total Forum Fees	= \$ 2,400.00
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The Panel has assessed forum fees in the amount of \$1,200.00 to Respondent Umber.

The Panel has assessed forum fees in the amount of \$600.00 to Respondents, jointly and severally.

The Panel has assessed forum fees in the amount of \$600.00 to Claimant.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Forum Fee	= \$ 600.00
<u>Initial Filing Fee</u>	= \$ 375.00
Total Fees	= \$ 975.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Edwards is solely liable for:

Member Fees	= \$7,000.00
Total Fees	= \$7,000.00

Less payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Umber is solely liable for:

Forum Fees	= \$1,200.00
Total Fees	= \$1,200.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,200.00

Respondents Umber and Edwards are jointly and severally liable for:

Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 150.00
Balance Due NASD Dispute Resolution	= \$ 450.00

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

ARBITRATION PANEL

<i>Paul E. Flora, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Denis E. Coughlin</i>	-	<i>Public Arbitrator</i>
<i>Robert S. Natiss</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Paul E. Flora, Esq.
Public Arbitrator, Presiding Chairperson

March 17, 2005
Signature Date

/s/
Denis E. Coughlin
Public Arbitrator

March 16, 2005
Signature Date

/s/
Robert S. Natiss
Non-Public Arbitrator

March 16, 2005
Signature Date

March 18, 2005
Date of Service (For NASD Dispute Resolution office use only)

<u>Less payments</u>	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Umber is solely liable for:

<u>Forum Fees</u>	= \$1,200.00
Total Fees	= \$1,200.00
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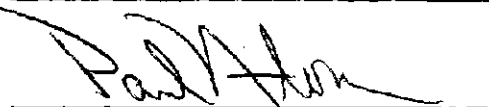
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Paul E. Flora, Esq.
Denis E. Coughlin
Robert S. Natiss

-
-
-

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



Paul E. Flora, Esq.
Public Arbitrator, Presiding Chairperson

March 17, 2005

Signature Date

Denis E. Coughlin
Public Arbitrator

Signature Date

Robert S. Natiss
Non-Public Arbitrator

Signature Date

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

Mar. 16. 2005 2:08PM

NASD

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Arbitration No. 03-02719
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<u>Less payments</u>	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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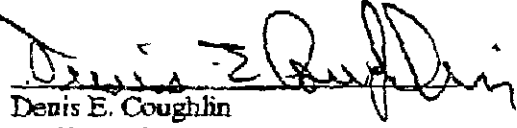
Paul E. Flora, Esq.
Denis E. Coughlin
Robert S. Natiss

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Paul E. Flora, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Denis E. Coughlin
Public Arbitrator

Signature Date

Robert S. Natiss
Non-Public Arbitrator

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

NASD Dispute Resolution
Arbitration No. 03-02719
Stipulated Award Page 5

<u>Less payments</u>	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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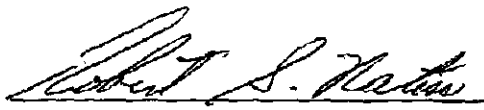
Concurring Arbitrators' Signatures

Paul E. Flora, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Denis E. Coughlin
Public Arbitrator

Signature Date


Robert S. Natiss
Non-Public Arbitrator

3-16-05
Signature Date

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