

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

George A. Nolan and George A. Nolan TTEE Nolan Family Trust, Claimants v. A.G. Edwards & Sons, Inc., Marianne G. Depetris and Paul A. Kromhout, Respondents

Case Number: 03-02809

Hearing Site: San Francisco, California

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Nature of the Dispute: Customers v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimants:

Timothy A. Canning, Esq.  
Novato, California

For Respondents:

Nuviah Shirazi, Esq.  
A.G. Edwards & Sons, Inc.  
St. Louis, Missouri

**CASE INFORMATION**

Statement of Claim filed: April 16, 2003

Claimants' Uniform Submission Agreement signed: April 4, 2003

Joint Statement of Answer filed by Respondents A.G. Edwards & Sons, Inc. ("A.G. Edwards"), Marianne G. Depetris and Paul A. Kromhout: July 1, 2003

**CASE SUMMARY**

Claimants alleged the following claims with respect to investments in ACLN Ltd. and RCN Corp. stock: 1) Fraud; 2) Negligence; 3) Breach of Contract; 4) Breach of Fiduciary Duty; 5) Misrepresentation; 6) Unsuitability; and 7) Failure to Supervise.

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

### **RELIEF REQUESTED**

Claimants requested:

1. Damages at no less than \$99,999.00;
2. Reimbursement for the reasonable costs and fees in the prosecution of this claim, including expert witness and attorney fees;
3. Punitive and exemplary damages; and
4. Any other award of damages the Panel deems appropriate in this matter.

Respondents requested:

1. Dismissal of Claimants' claims with prejudice;
2. Costs;
3. Reasonable attorney fees; and
4. Such other relief deemed just and proper by the Panel.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents A.G. Edwards, Marianne G. Depetris and Paul A. Kromhout did not file with NASD Dispute Resolution ("NASD-DR") properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimants' Claim, are bound by the determination of the Panel on all issues submitted.

On July 1 and July 2, 2003, Claimants and Claimants' 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On or about July 9, 2004, Claimants withdrew all complaints and dismissed all charges filed by them against Respondents Marianne G. Depetris and Paul A. Kromhout with prejudice.

On or about August 23, 2004, the parties (Claimants and Respondents) by and through their counsel, Mr. Canning and Ms. Shirazi, agreed to the terms of this Stipulated Award wherein the parties request that the undersigned Arbitrators enter an Order expunging all references to this case from the NASD Central Registration Depository records of Marianne G. Depetris and Paul A. Kromhout.

Claimants and Respondent A.G. Edwards informed NASD-DR on July 9, 2004, that they had entered into a settlement agreement and that the Claimants were withdrawing all claims filed against A.G. Edwards with prejudice. The parties apprised NASD-DR of their agreement that the hearing scheduled for July 13, 14, and 15, 2004, could be cancelled.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings and the parties' submission of this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondent A.G. Edwards are hereby dismissed with prejudice.
2. All claims against Respondents Marianne G. Depetris and Paul A. Kromhout have been dismissed with prejudice by Claimants; therefore, the Arbitration Panel hereby enters this Award dismissing all said claims with prejudice.
3. Each party is responsible for their fees associated with the above-referenced claim before the NASD-DR.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Marianne G. Depetris' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Marianne G. Depetris must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Paul A. Kromhout's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Paul A. Kromhout must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
6. All other relief requested and 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 = \$ 225.00

**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, the member firm A.G. Edwards is a party and the following fees are assessed:

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,700.00</u>
<b>Total Member Fees</b>	<b>= \$ 3,550.00</b>

**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:

(2) Pre-hearing conference sessions with the Panel @ \$750.00/session	= \$ 1,500.00
Pre-hearing conferences:      October 27, 2003                      1 session	
November 18, 2004                      1 session	

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**Total Forum Fees** = **\$ 1,500.00**

The Panel assessed \$750.00 in forum fees jointly and severally to Claimants, George A. Nolan and George A. Nolan TTEE Nolan Family Trust.

The Panel assessed \$750.00 in forum fees jointly and severally to Respondents A.G. Edwards, Marianne G. Depetris and Paul A. Kromhout.

**Fee Summary**

1. Claimants George A. Nolan and George A. Nolan TTEE Nolan Family Trust are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 750.00</u>
Total Fees	= \$ 975.00
<u>Less payments</u>	<u>= \$( 975.00)</u>
<b>Balance Due NASD-DR</b>	<b>= \$ 0.00</b>

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

Member Fees	= \$ 3,550.00
Less payments	= \$(3,550.00)
<b>Balance Due NASD-DR</b>	<b>= \$ 0.00</b>

3. Respondents A.G. Edwards, Marianne G. Depetris and Paul A. Kromhout are charged jointly and severally with the following fees and costs:

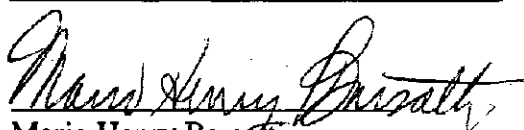
Forum Fees	= \$ 750.00
Less payments	= \$( 0.00)
<b>Balance Due NASD-DR</b>	<b>= \$ 750.00</b>

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

**ARBITRATION PANEL**

Mario Henry Barsotti	-	Public Arbitrator, Presiding Chair
David Zebker	-	Public Arbitrator
Nicholas J. Caputo	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Mario Henry Barsotti  
Chair, Public Arbitrator

12/8/04  
Signature Date

\_\_\_\_\_  
David Zebker  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Nicholas J. Caputo  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

12/16/04  
Date of Service

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

Member Fees	= \$ 3,550.00
<u>Less payments</u>	<u>= \$(3,550.00)</u>
<b>Balance Due NASD-DR</b>	<b>= \$ 0.00</b>

3. Respondents A.G. Edwards, Marianne G. Depetris and Paul A. Kromhout are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 750.00
<u>Less payments</u>	<u>= \$( 0.00)</u>
<b>Balance Due NASD-DR</b>	<b>= \$ 750.00</b>

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


**ARBITRATION PANEL**

Mario Henry Barsotti	-	Public Arbitrator, Presiding Chair
David Zebker	-	Public Arbitrator
Nicholas J. Caputo	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Mario Henry Barsotti  
Chair, Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
David Zebker  
Public Arbitrator

12/2/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Nicholas J. Caputo  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

12/16/04  
\_\_\_\_\_  
Date of Service

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

Member Fees	= \$ 3,550.00
<u>Less payments</u>	= \$(3,550.00)
<b>Balance Due NASD-DR</b>	<b>= \$ 0.00</b>

3. Respondents A.G. Edwards, Marianne G. Depetris and Paul A. Kromhout are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 750.00
<u>Less payments</u>	= \$( 0.00)
<b>Balance Due NASD-DR</b>	<b>= \$ 750.00</b>

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

**ARBITRATION PANEL**

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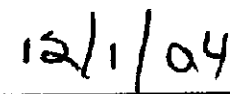
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Mario Henry Barsotti  
Chair, Public Arbitrator


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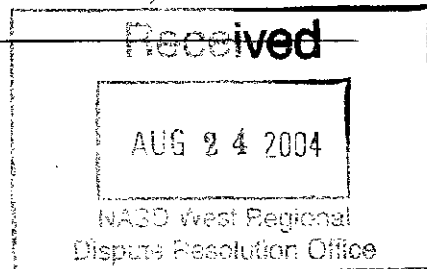
  
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Nicholas J. Caputo  
Non-Public Arbitrator

  
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Signature Date

  
\_\_\_\_\_  
Date of Service

IN ARBITRATION BEFORE THE  
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

GEORGE NOLAN, Individually, )  
GEORGE NOLAN, TTEE Nolan Family )  
Trust, )  
 )  
Claimant, )  
 )  
v. )  
 )  
A.G. EDWARDS & SONS, INC., )  
MARIANNE DEPETRIS, and )  
PAUL KROMHOUT, )  
 )  
Respondents. )



Case No. 03-02809

**MOTION FOR ENTRY OF THE STIPULATED ORDER BY THE**  
**ARBITRATION PANEL**

COME NOW Claimant, George A. Nolan, Individually, and George Nolan TTEE Nolan Family Trust, by and through counsel, Timothy A. Canning, and Respondents, A.G. Edwards & Sons, Inc., Marianne Depetris, and Paul Kromhout, by and through counsel, Nuviah Shirazi, and move for the Arbitration Panel presiding over the above-captioned matter to enter the Stipulated Order presented by the parties. In support thereof, the parties state as follows:

1. On July 9, 2004, Claimants notified the National Association of Securities Dealers, Inc., that he was withdrawing all complaints and dismissing all charges filed by him against Respondents Marianne Depetris and Paul Kromhout with prejudice.
2. On July 9, 2004, the parties, Claimant and Respondents, by and through their counsel, agreed to the terms of the Stipulated Award

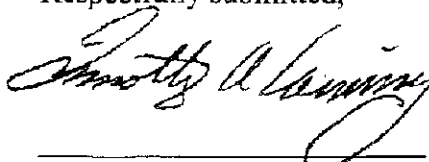


attached hereto wherein the parties are requesting that the presiding Arbitrators enter an Order expunging all references of this case from the Central Registration Depository records of Marianne Depetris and Paul Kromhout.

3. On July 9, 2004, the parties, Claimant and A.G. Edwards, informed the National Association of Securities Dealers, that Claimant and Respondent A. G. Edwards & Sons, Inc., had agreed to a confidential settlement agreement and that Claimant was withdrawing all claims filed against A.G. Edwards & Sons, Inc., with prejudice. The parties further advised the National Association of Securities Dealers, Inc., of their agreement that the hearing scheduled for July 13, 14, and 15, 2004, could be cancelled.
4. The parties have agreed that the award in this matter, as proposed in the attached Stipulated Award, may be executed in counterpart copies or that a handwritten and signed Award may be entered. In either case, the parties have agreed to receive copies of the Award while the original remains on file with the National Association of Securities Dealers, Inc.

WHEREFORE, the Claimant and the Respondents request that the  
Arbitration Panel presiding over the above-captioned matter enter the Stipulated  
Award attached hereto.

Respectfully submitted,

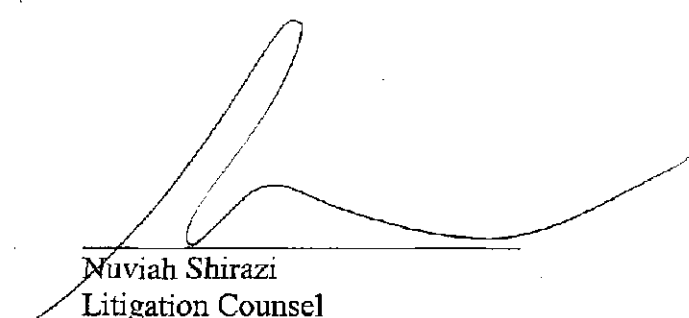


<sup>Aug</sup>  
Dated: ~~July~~ 13, 2004

Timothy A. Canning, Esq.  
The Law Office of Timothy A. Canning  
Two Commercial Blvd., Suite 203  
Novato, CA 94949  
(415) 382-7899

Attorney for Claimants

<sup>August</sup>  
Dated: ~~July~~ 31, 2004



Nuviah Shirazi  
Litigation Counsel  
A.G. Edwards & Sons, Inc.  
One North Jefferson  
St. Louis, MO 63103  
(314) 955-7911

Attorney for Respondents


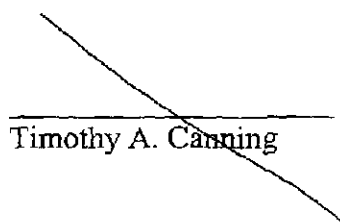
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CERTIFICATE OF SERVICE

This is to certify that an original and three copies of the above and foregoing Motion for Entry of the Stipulated Order by the Arbitration Panel was sent via overnight mail this 23rd day of July 2004 to:

August

Derek L. Sorrells  
NASD Dispute Resolution, Inc.  
300 South Grand Ave., Suite 900  
Los Angeles, CA 90071

  
\_\_\_\_\_  
Nuviah Shirazi  
\_\_\_\_\_  
Timothy A. Canning