

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

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In the Matter of the Arbitration Between:

Name of the Claimant

A.G. Edwards & Sons, Inc.

Case Number: 03-02838

Name of the Respondents

Bruce A. Barnhart, Jr.

Hearing Site: St. Louis, Missouri

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**NATURE OF DISPUTE**

Member Firm vs. Associated Person

**REPRESENTATION OF PARTIES**

Clay L. Grumke, Esq. of A.G. Edwards & Sons, Inc. ("A.G. Edwards") located in St. Louis, Missouri, hereinafter referred to as "Claimant."

John E. MacDonald, Esq. of the law firm Stark & Stark represented the Respondent, Bruce A. Barnhart, Jr. ("Barnhart"), hereinafter referred to as "Respondent."

**CASE INFORMATION**

Statement of Claim filed on or about April 16, 2003. Claimant, A.G. Edwards signed the Uniform Submission Agreement on April 16, 2003.

Statement of Answer filed by Respondent Barnhart on or about July 26, 2003. Respondent Barnhart signed the Uniform Submission Agreement on September 2, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty and solicitation of client and recruitment of employees to start a branch office for Wachovia Securities.

Unless specifically admitted in his Answer, Respondent Barnhart denied the allegations made in the Statement of Claim and asserted the following defenses:

1. A.G. Edwards' claims are barred by the common law Doctrine of Unclean Hands;
2. A.G. Edwards' claims are barred by the common law Doctrine of Waiver; and
3. A.G. Edwards' claims are barred by the common law Doctrine of Estoppel.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in excess of 100,000.00.

Respondent Barnhart requested that the A.G. Edwards' Statement of Claim be dismissed in its entirety.

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

On August 19, 2004 Respondent A.G. Edwards filed a Motion for an Order requiring that the damage claim be stricken, or in alternative, requiring Claimant to file an Amended Statement of Claim. A pre-hearing conference was held on September 2, 2004 and the Panel denied Respondent's Motion.

At the hearing of this matter, Respondent Barnhart filed a Motion to Dismiss. The Panel denied said Motion.

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. Respondent, Bruce A. Barnhart, Jr., is solely liable for and shall pay to Claimant, A.G. Edwards & Sons, Inc. the sum of \$30,000.00 as compensatory damages, plus interest at the rate of 9% per annum to accrue from date the Award is served until Award is paid in full.
2. Parties shall bear their own costs, including attorneys' fees, except as specified herein.
3. 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	= \$1,000.00
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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

### **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 @ \$1,125.00	= \$2,250.00
Pre-hearing conferences: January 21, 2004 1 session	
September 2, 2004 1 session	
Two (2) Hearing sessions @ \$1,125.00	= \$2,250.00
Hearing Date: September 8, 2004 2 sessions	
Total Forum Fees	= \$4,500.00

1. The Panel assessed 50% of the total forum fees in the amount of \$2,250.00 solely to Claimant A.G. Edwards & Sons, Inc.
2. The Panel assessed 50% of the total forum fees in the amount of \$2,250.00 solely to Respondent Bruce A. Barnhart, Jr.

### **EEE SUMMARY**

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

Initial Filing Fee	= \$1,000.00
Member Fees	= \$5,200.00
Forum Fees	= \$2,250.00
Total Fees	= \$8,450.00
Less payments	= \$7,325.00
Balance Due NASD Dispute Resolution	= \$1,125.00

2. Respondent Bruce A. Barnhart, Jr. is solely liable for:

Forum Fees	= \$2,250.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,250.00

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

**ARBITRATION PANEL**

Keith E. Mattern, Esq.	-	Public Arbitrator, Presiding Chairperson
Lawrence M. Raskin, CPA	-	Public Arbitrator
Steven C. Melichar	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Keith E. Mattern, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
9/10/04  
Signature Date

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Lawrence M. Raskin, CPA  
Public Arbitrator

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9/10/04  
Signature Date

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Steven C. Melichar  
Non-Public Arbitrator

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