

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Marion H. Holmes, Trustee of The Marion H. Holmes Rev. Trust U/A dtd. 07/12/94, Claimant v.
A.G. Edwards & Sons, Inc. and Thomas P. Bjork, Respondents

Case Number: 03-03021

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimant:

Howard M. Hoffman, Esq.
Law Offices of Howard M. Hoffman
Sacramento, California

For Respondents:

Matthew Salamon, Esq.
A.G. Edwards & Sons, Inc.
St. Louis, Missouri

CASE INFORMATION

Statement of Claim filed: April 22, 2003

Claimant's Uniform Submission Agreement signed: April 1, 2003

Joint Statement of Answer filed by Respondents A.G. Edwards & Sons, Inc. ("Edwards") and
Thomas P. Bjork: July 9, 2003

Respondent Edwards' Uniform Submission Agreement signed: June 2, 2003

Respondent Thomas P. Bjork's Uniform Submission Agreement signed: June 2, 2003

CASE SUMMARY

Claimant alleged that Respondents recommended the purchase of stock mutual funds for Claimant's account and that the investments in stock mutual funds were unsuitable for Claimant's account. Claimant also alleged the following claims: 1) Intentional Breach of Fiduciary Duty (Suitability); 2) Negligent Breach of Fiduciary Duty (Suitability); and 3) Failure to Supervise.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages sufficient to make Claimant whole, including out of pocket loss, and pre-judgment interest or lost opportunity cost;
2. Exemplary and punitive damages;
3. Enhancement of the damages awarded Claimant pursuant to California Civil Code Section 3345;
4. Reasonable attorney's fees;
5. Costs; and
6. Such other and further relief as the Panel may deem just and proper.

Respondents requested:

1. That Claimant's Statement of Claim be dismissed with prejudice;
2. Expungement of this matter from Mr. Bjork's records maintained by the NASD Central Registration Depository ("CRD");
3. Costs; and
4. Such other and further relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On May 29, 2003, Claimant and Claimant's 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 Claimant 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.

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims by Claimant, including the claims for exemplary and punitive damages, are dismissed.

- 2) Respondents' request for expungement of all reference to the above captioned arbitration from Respondent Thomas P. Bjork's registration records maintained by the CRD is denied.
- 3) Each party shall bear its own costs, including attorney's fees.
- 4) All other relief 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	= \$250.00
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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, Edwards is a party and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,200.00</u>
Total Member Fees	= \$4,450.00

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:

(1) Pre-hearing conference with a single arbitrator @ \$450.00/session	= \$450.00
Pre-hearing conference: May 19, 2004 1 session	

(1) Pre-hearing conference session with the Panel @ \$1,000.00/session	= \$1,000.00
Pre-hearing conference: December 1, 2003 1 session	

(5) Hearing sessions @ \$1,000.00/session	= \$5,000.00
Hearing: July 19, 2004 2 sessions	
July 20, 2004 2 sessions	
July 21, 2004 1 session	

Total Forum Fees	= \$6,450.00
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The Panel assessed \$3,225.00 in forum fees to Claimant.

The Panel assessed \$3,225.00 in forum fees jointly and severally to Respondents Edwards and Thomas P. Bjork.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 3,225.00
Total Fees	= \$ 3,475.00
Less Payments	= \$ (1,250.00)
Balance Due NASD-DR	= \$ 2,225.00

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

Member Fees	= \$ 4,450.00
Less Payments	= \$(4,450.00)
Balance Due NASD-DR	= \$ 0.00

3. Respondents Edwards and Thomas P. Bjork are charged jointly and severally with the following fees and costs:


Forum Fees	= \$ 3,225.00
Less Payments	= \$ (0.00)
Balance Due NASD-DR	= \$ 3,225.00

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

ARBITRATION PANEL

Arturo Maimoni	-	Public Arbitrator, Presiding Chair
Kathryn J. Toronto	-	Public Arbitrator
Juleanne A. Thiebaut	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Arturo Maimoni
Chair, Public Arbitrator

8/2/04

Signature Date

Kathryn J. Toronto
Public Arbitrator

Signature Date

Juleanne A. Thiebaut
Non-Public Arbitrator

Signature Date

8/02/04

Date of Service

ARBITRATION PANEL

Arturo Maimoni	-	Public Arbitrator, Presiding Chair
Kathryn J. Toronto	-	Public Arbitrator
Juleanne A. Thiebaut	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Arturo Maimoni
Chair, Public Arbitrator



Kathryn J. Toronto
Public Arbitrator

Signature Date

072804
Signature Date

Juleanne A. Thiebaut
Non-Public Arbitrator

Signature Date

8/02/04
Date of Service

ARBITRATION PANEL

Arturo Maimoni	-	Public Arbitrator, Presiding Chair
Kathryn J. Toronto	-	Public Arbitrator
Julianne A. Thiebaut	-	Non-Public Arbitrator

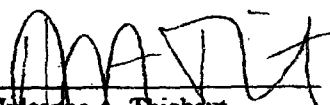
Concurring Arbitrators' Signatures

Arturo Maimoni
Chair, Public Arbitrator

Signature Date

Kathryn J. Toronto
Public Arbitrator

Signature Date



Julianne A. Thiebaut
Non-Public Arbitrator



Signature Date



Date of Service