

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:)

Name of the Claimant)

Michael Ferman)

Case Number: 03-03039

Name of the Respondents)

A.G. Edwards & Sons, Inc.,)

A.G. Edwards, Inc., and Compensation)

Committee of A.G. Edwards & Sons, Inc.,)

Plan Administrator for the A.G. Edwards, Inc.)

Excess Profit Sharing Deferred)

Compensation Plan, and Plan Administrator)

of the A.G. Edwards, Inc.)

1988 Incentive Stock Option Plan 2002)

Restatement)

Hearing Site: St. Louis, Missouri

NATURE OF DISPUTE

Customer vs. Member Firm and Non-Member Firms

REPRESENTATION OF PARTIES

Stefan J. Glynias, Esq. and Rhonda a. O'Brien, Esq. of the law firm Lashly & Baer, P.C., located in St. Louis, Missouri, represented Claimant, Michael Ferman, hereinafter referred to as "Claimant Ferman."

Phyllis Hartrich, Esq., of A.G. Edwards & Sons, Inc., filed an appearance and Joint Answer for A. G. Edwards & Sons, Inc., A.G. Edwards, Inc., and Compensation Committee of A.G. Edwards & Sons, Inc. Plan Administrator for the A.G. Edwards, Inc. Excess Profit Sharing Deferred Compensation Plan, and Plan Administrator of the A.G. Edwards, Inc. 1988 Incentive Stock Option Plan 2002 Restatement. Nuviah Shirazi, Esq. of A.G. Edwards & Sons, Inc., located in St. Louis, Missouri, filed her appearance on June 30, 2004 and represented the Respondents, hereinafter collectively referred to as "Respondents A.G. Edwards."

CASE INFORMATION

Statement of Claim filed on April 23, 2003. Claimant Ferman signed the Uniform Submission Agreement on April 2, 2003.

Statement of Answer jointly filed by Respondents A.G. Edwards on July 18, 2003. Respondent A.G. Edwards signed the Uniform Submission Agreement on August 4, 2003.

Ferman filed a Motion for Sanctions on November 12, 2004. Respondents filed their response on November 19, 2004.

CASE SUMMARY

Ferman asserted the following causes of action: breach of employment contract and compensation. The causes of action relate to an employee pension benefit plan held with A.G. Edwards & Sons, Inc. and the Compensation Committee of A.G. Edwards & Sons, Inc., in its capacity as Plan Administrator for the A.G. Edwards, Inc. Excess Profit Sharing Deferred Compensation Plan. Ferman asserted that A.G. Edwards breached the Stock Plan by claiming a forfeiture of Ferman's benefits and account balance under the Stock Plan. Ferman also asserted that forfeiture was unreasonable and unenforceable because A.G. Edwards terminated him, would not allow him to remain employed with A.G. Edwards and the anti-competition Stock Plan Forfeiture Provision is not reasonably limited in terms of time, geographic location and scope.

Unless specifically admitted in their Answer, Respondents A.G. Edwards denied each and every allegation contained in the Statement of Claim and asserted the following defenses: (1) the Statement of Claim fails to state a claim against A.G. Edwards upon which relief can be granted; (2) to the extent that Ferman implies a claim for wrongful termination, A.G. Edwards violated no contract of employment in discharging Ferman; (3) the Statement of Claim and each purported allegation contained therein is barred in whole or in part because A.G. Edwards had an honest, reasonable, good faith belief in the facts upon which their actions were taken; and (4) the Compensation Committee is not a legal entity and hence, this Panel has no ability to consider an Award against it.

RELIEF REQUESTED

Ferman requested \$250,000.00 in compensatory damages; \$750,000.00 in punitive damages; interest; cost and attorney's fees; and for such other relief as may be just and reasonable.

A.G. Edwards requested dismissal of all claims in their entirety, and that Panel find Ferman responsible for the forfeiture of his benefits by engaging in competition with A.G. Edwards.

OTHER ISSUES CONSIDERED AND DECIDED

Pursuant to the Motion for Sanctions, Ferman alleged that on the last day of hearing and at the close of this proceeding, A.G. Edwards raised grounds of bias on the part of the Panel's former Chair, Donald E. Walter, Esq. ("Walter"). As a result of A.G. Edwards' statements regarding Walter's conduct, which they believed to be biased and partial, Arbitrator Walter recused himself from the Panel at the close of hearing prior to the completion and determination of the final Award in this matter. In his Motion, Ferman alleged that A.G. Edwards' actions were untimely, improper and groundless, and caused a denial of due process to Ferman by denying him a Panel to whom both Ferman and A.G. Edwards had agreed to submit this matter. Ferman requested for the Panel to award judgment as prayed for in his Statement of Claim, costs and attorney's fees.

Respondents asserted that Ferman's Motion for Sanctions were misplaced, that A.G. Edwards' conduct in its assessment of the fairness and impartiality of its hearing does not merit an assessment of sanctions; that it was Arbitrator Walter's conduct and recusal that was inappropriate; and that A.G. Edwards had a right, as Ferman did, to address whether the hearing was conducted in a fair and impartial manner. A.G. Edwards requested the dismissal

of Ferman's Motion for Sanctions.

The Panel allowed for post-hearing submissions, specifically, for a detailed statement of attorney's fees sought by Claimant Ferman, no later than March 18, 2005. Respondent filed a response to Ferman's submission on March 28, 2005.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Any and all claims asserted by Claimant, Michael Ferman, are denied.
2. Claimant Ferman's Motion for Sanctions is denied.
3. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
4. 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	= \$ 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, A.G. Edwards & Sons, Inc. is a former firm and party and is assessed the following:

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

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:

One (1) Pre-hearing session with a single arbitrator @ \$ 450.00	= \$ 450.00
Pre-hearing conference: September 8, 2004 1 session	

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: April 14, 2004 1 session	

Six (6) Hearing sessions @ \$1,200.00 = \$ 7,200.00

Hearing Date): November 8, 2004 2 sessions
November 9, 2004 2 sessions
November 10, 2004 2 sessions

Total Forum Fees = \$ 8,850.00

1. The Panel assessed 50% of the total forum fees in the amount of \$4,425.00 solely to Claimant, Michael Ferman.
2. The Panel assessed 50% of the total forum fees in the amount of \$4,425.00 jointly and severally to A.G. Edwards & Sons, Inc., A.G. Edwards, Inc. and Compensation Committee of A.G. Edwards & Sons, Inc.

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.

1. Michael Ferman requested copies of the hearing tapes = \$ 195.00
2. A.G. Edwards & Sons, Inc. requested copies of the hearing tapes = \$ 195.00

SEE SUMMARY

1. Claimant, Michael Ferman, is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 4,425.00
<u>Administrative Costs</u>	= \$ 195.00
Total Fees	= \$ 4,995.00
<u>Less payments</u>	= \$ 1,770.00
Balance Due NASD Dispute Resolution	= \$ 3,225.00

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

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

3. Respondents, A.G. Edwards & Sons, Inc., A.G. Edwards, Inc. and Compensation Committee of A.G. Edwards & Sons, Inc. are jointly and severally liable for:

Forum Fees	= \$ 4,425.00
<u>Administrative Fee</u>	= \$ 195.00
Total Fees	= \$ 4,620.00
<u>Less payments</u>	= \$ 1,195.00
Balance Due NASD Dispute Resolution	= \$ 3,425.00

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

ARBITRATION PANEL

Darla J. Goodrich	-	Non-Public Arbitrator, Presiding Chairperson
Steven C. Melichar	-	Non-Public Arbitrator
Lynn D. (Doug) Newton	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Darla J. Goodrich

Darla J. Goodrich
Non-Public Arbitrator, Presiding Chairperson

4/5/05

Signature Date

/s/ Steve C. Melichar

Steve C. Melichar
Non-Public Arbitrator

4/5/05

Signature Date

/s/ Lynn D. Newton

Lynn D. (Doug) Newton
Non-Public Arbitrator

4/5/05

Signature Date

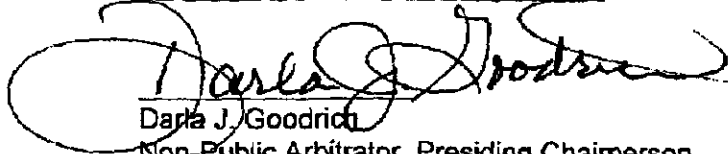
4/5/05

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

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Lynn D. (Doug) Newton	-	Non-Public Arbitrator

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Non-Public Arbitrator, Presiding Chairperson

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Non-Public Arbitrator



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Balance Due NASD Dispute Resolution	= \$ 3,225.00

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

3. Respondents, A.G. Edwards & Sons, Inc., A.G. Edwards, Inc. and Compensation Committee of A.G. Edwards & Sons, Inc. are jointly and severally liable for:

☐ PRIVATE ☐ Forum Fees

= \$ 4,425.00	
Administrative Fee	= \$ 195.00 <input type="checkbox"/> tc
<input checked="" type="checkbox"/> Fee Type	= \$xxx" <input type="checkbox"/>
Total Fees	= \$ 4,620.00
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Balance Due NASD Dispute Resolution	= \$ 3,425.00

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Concurring Arbitrators' Signatures

Darla J. Goodrich
Non-Public Arbitrator, Presiding Chairperson

Signature Date

Steve C. Melichar
Non-Public Arbitrator

Signature Date

Lynn D. (Doug) Newton
Non-Public Arbitrator

Lynn D (Doug) Newton

Signature Date April 5, 2005

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