

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

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In the Matter of the Arbitration Between:

Name of the Claimants

Charles and Carol Ann Thompson

Case Number: 03-04636

Name of the Respondents

A.G. Edwards & Sons, Inc. and  
Jeffrey B. Coffman

Hearing Site: Dallas, Texas

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**NATURE OF THE DISPUTE**

Public Customers v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Claimants Charles and Carol Ann Thompson, hereinafter collectively referred to as "Claimants":  
H. Dale Langley, Jr., Esq., of The Law Firm of H. Dale Langley, Jr., located in Austin, Texas.

Respondents A.G. Edwards & Sons, Inc. ("AGE") and Jeffrey B. Coffman ("Coffman"),  
hereinafter collectively referred to as "Respondents": Matthew Salamon, Esq., of A.G. Edwards  
& Sons, Inc., located in St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed: June 26, 2003.

Claimants signed the Uniform Submission Agreement: June 25, 2003.

Amended Statement of Claim filed: October 19, 2004.

Statement of Answer filed by Respondents: August 27, 2003.

Respondent AGE signed the Uniform Submission Agreement: July 14, 2003.

Respondent Coffman signed the Uniform Submission Agreement: July 22, 2003.

Response to Amended Statement of Claim filed on or about: October 28, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: violation of the Texas Deceptive Trade Practices Act; negligence; negligent misrepresentation; breach of warranty; breach of fiduciary duty; fraud and constructive fraud; violation of NASD Rule 2310(a); violation of NASD Rule 2310(b); failure to supervise; common law negligence; violation of the Texas Security Act; and violation of the Federal Securities Act. These causes of action related to the recommendation

and purchase of certain annuity investments for Claimants' accounts that were characterized as "speculative, high-risk, overly volatile, and carried extremely high fees and commissions." These annuities were purchased in spite of Claimant's desire for only a conservative investment strategy.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants failed to act promptly and with due diligence to mitigate any alleged damages after Claimants knew or should have known of the alleged facts and circumstances of which Claimants complain;
2. Claimants waived and/or are estopped from asserting claims against Respondents by virtue of their conduct and dealings with Respondents. As a result of the Claimants' failure to notify AGE or Coffinan promptly after receipt of written confirmations, monthly statements and other documents evidencing the account status or any potentially non-suitable transaction or position acquired, Claimants are barred from recovering from Respondents under the doctrines of account stated, estoppel, ratification, waiver and laches, because Respondents relied upon the Claimants to reasonably monitor their accounts and relied upon Claimants' silence and acquiescence in response to continued notice of trades, transactions and account status;
3. By failing to exercise that degree of care over their affairs and investments which ordinarily prudent investors would exercise, Claimants caused or contributed to cause the alleged damages of which Claimants complain herein, and should be barred from recovering any alleged damages based on their own contributory negligence or comparative fault;
4. Claimants were aware from the outset of the potential risks of loss associated with investing in securities, and they voluntarily and knowingly assumed such risks. The Claimants' knowing and voluntary assumption of such risks was the sole and proximate cause of any alleged damage or loss. Claimants cannot be entitled to recover for any alleged damages resulting from the disclosed and known risks which Claimants voluntarily assumed;
5. Damages or losses alleged by Claimants were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in Claimants' accounts for which Respondents are not liable or responsible; and,
6. As a result of Claimants' failure to object or notify AGE of the acts or omissions of which Claimants complain within ten (10) days of the receipt of written confirmations, monthly statements and any other documents evidencing or setting forth transactions or an account status or feature, Claimants are barred from recovering from Respondents under Section 8-319 of the Uniform Commercial Code as enacted in the State of Texas. To the extent Claimants allege damages were sustained after that time, Claimants are barred from recovering such damages.

### **RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$ 500,000.00
Treble Damages	\$ 1,500,000.00
Punitive/Exemplary Damages	Unspecified Sum
Interest	Pre- and post judgment interest at the highest lawful rate
Attorneys' Fees	Unspecified Sum
Other Costs	Unspecified Sum
Other Monetary/Non-Monetary Relief if any:	To which the Claimants are entitled.

Respondents requested that the Statement of Claim be dismissed with prejudice; that Respondents be awarded their costs; for a recommendation that this matter be expunged from the record of Respondents as maintained by the Central Registration Depository division of the NASD or any exchange, and for such other relief deemed appropriate under the facts and circumstances of the case.

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

A hearing, Claimant requested leave to file an Amended Statement of Claim. The Panel granted the Motion and permitted Respondents to file a Response by October 29, 2004.

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. The claims asserted by the Claimants, Charles and Carol Ann Thompson, are dismissed and denied in their entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated in this award; and,
3. Any and all relief not specifically addressed herein, including punitive or treble 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 = \$ 500.00

**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 the following member fees are assessed:

Member surcharge = \$ 2,800.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 5,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed: None.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: January 7, 2004 1 session	
Six (6) Hearing sessions @ \$1,200.00	= \$ 7,200.00
Hearing Dates: October 19, 2004 2 sessions	
October 20, 2004 3 sessions	
October 21, 2004 1 session	
<hr/> Total Forum Fees	<hr/> = \$ 8,400.00

The Panel has assessed \$4,200.00 of the forum fees, jointly and severally, to the Claimants, Charles and Carol Ann Thompson, and \$4,200.00 of the forum fees to Respondent A.G. Edwards & Sons, Inc.

**SEE SUMMARY**

Claimants Charles and Carol Ann Thompson are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$ 4,700.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00

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

Member Fees = \$ 8,550.00

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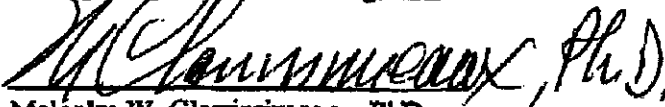
Forum Fees	= \$ 4,200.00
Total Fees	= \$12,750.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 4,200.00

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

**ARBITRATION PANEL**

Malcolm W. Clarrissimeaux, PhD - Public Arbitrator, Presiding Chairperson  
Martha Z. Ralstin - Public Arbitrator  
Peter J. Conlon, Jr. - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Malcolm W. Clarrissimeaux, PhD  
Public Arbitrator, Presiding Chairperson

11-6-04  
Signature Date

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Martha Z. Ralstin  
Public Arbitrator

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Signature Date

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Peter J. Conlon, Jr.  
Non-Public Arbitrator

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Signature Date

11/9/04   
Date of Service (For NASD Dispute Resolution office use only)

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Arbitration No. 03-04636  
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Signature Date



11/5/04

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Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chairperson

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Signature Date

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Martha Z. Ralstin  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Peter J. Conlon, Jr.  
Non-Public Arbitrator

10 Nov 2004  
Signature Date

11/9/04   
Date of Service (For NASD Dispute Resolution office use only)