

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

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In the Matter of the Arbitration Between:

Marie A. Bell, Claimant v. A.G. Edwards & Sons, Inc., Respondent

Case Number: 03-05075

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

For Claimant:

Brett A. Alcala, Esq.  
Alcala Law Firm  
San Mateo, California

For Respondent:

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

**CASE INFORMATION**

Statement of Claim filed: June 9, 2003

Claimant's Uniform Submission Agreement signed: May 30, 2003

Statement of Answer filed by Respondent A.G. Edwards & Sons, Inc. ("Edwards"): September 2, 2003

Respondent Edwards' Uniform Submission Agreement signed: July 22, 2003

**CASE SUMMARY**

Claimant alleged the following claims with respect to investments in American Funds: 1) Failure to Supervise and Respondent Superior; 2) Suitability and Breach of Fiduciary Duty; 3) Failure to Execute; 4) Breach of Contract; 5) Negligence and Negligent Misrepresentation; 6) Breach of the Implied Covenant of Good Faith and Fair Dealing; and 7) Violation of State Securities Laws; NASD Rules of Fair Practice and NYSE Rules.

Respondent denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondent also asserted affirmative defenses.

### **RELIEF REQUESTED**

**Claimant requested:**

1. Compensatory damages of \$384,327.00, calculated as follows:
  - a. Net losses in the amount of \$309,927.00; and
  - b. Lost income in the amount of \$74,400.00;
1. Pre-award interest at the legal rate of 10% commencing May 14, 2002, until the date of award, plus post-award interest, as allowed by law;
2. Legal fees and costs incurred in this arbitration pursuant to California Civil Code Section 1717 and the attorney fee provisions found in Edwards' customer agreements.

**Respondent requested:**

1. That Claimant's Statement of Claim be dismissed with prejudice;
2. That Respondent be awarded its costs; and
3. Such other and further relief deemed appropriate under the facts and circumstances of the case.

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

On July 23, 2003 and July 21, 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) Respondent is liable for and shall pay to Claimant, the sum of \$100,000.00 in satisfaction of Claimant's claims.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) 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 = \$300.00

#### **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, Edwards is a party and the following fees are assessed:

Member Surcharge = \$1,700.00

Pre-Hearing Process Fee = \$ 750.00

Hearing Process Fee = \$2,750.00

Total Member Fees = \$5,200.00

#### **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: April 16, 2004 1 session

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$1,125.00  
Pre-hearing conference: November 25, 2003 1 session

(5) Hearing sessions @ \$1,125.00/session = \$5,625.00  
Hearing: August 3, 2004 2 sessions  
August 4, 2004 2 sessions  
August 5, 2004 1 session

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**Total Forum Fees = \$7,200.00**

The Panel assessed \$3,600.00 in forum fees to Claimant.

The Panel assessed \$3,600.00 in forum fees to Respondent.

**Fee Summary**

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

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 3,600.00
Total Fees	= \$ 3,900.00
<u>Less Payments</u>	= \$ ( 1,425.00)
Balance Due NASD-DR	= \$ 2,475.00

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

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 3,600.00
Total Fees	= \$ 8,800.00
<u>Less Payments</u>	= \$(5,200.00)
Balance Due NASD-DR	= \$ 3,600.00

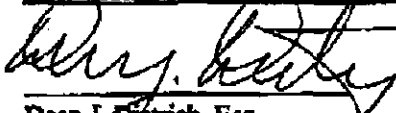
All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Dean J. Dietrich, Esq.  
Philip Aaron Tynon, JD  
Jerold R. Babin

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Dean J. Dietrich, Esq.  
Chair, Public Arbitrator

August 24, 2004  
Signature Date

Philip Aaron Tynon, JD  
Public Arbitrator

Signature Date

**Dissenting Arbitrator's Signature**

Jerold R. Babin  
Non-Public Arbitrator

Signature Date

8/25/04  
Date of Service


**ARBITRATION PANEL**

Dean J. Dietrich, Esq.	-	Public Arbitrator, Presiding Chair
Philip Aaron Tymon, JD	-	Public Arbitrator
Jerald R. Babin	-	Non-Public Arbitrator

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Dean J. Dietrich, Esq.  
Chair, Public Arbitrator

Signature Date

  
Philip Aaron Tymon, JD  
Public Arbitrator

8/25/04  
Signature Date

**Dissenting Arbitrator's Signature**

Jerald R. Babin  
Non-Public Arbitrator

Signature Date

8/25/04  
Date of Service

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Philip Aaron Tymon, JD	-	Public Arbitrator
Jerold R. Babin	-	Non-Public Arbitrator

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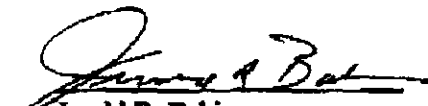
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Dean J. Dietrich, Esq.  
Chair, Public Arbitrator

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Signature Date

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Philip Aaron Tymon, JD  
Public Arbitrator

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Signature Date

**Dissenting Arbitrator's Signature**

  
Jerold R. Babin  
Non-Public Arbitrator

8-25-07  
Signature Date

8/25/04  
Date of Service