

**Award  
NASD Dispute Resolution**

In the Matter of the Arbitration Between:	)	
<u>Name of the Claimant</u>	)	<u>Case Number:</u> 04-00588
David J. Heger	)	
<u>Name of the Respondent</u>	)	<u>Hearing Site:</u> St. Louis, Missouri
A.G. Edwards & Sons, Inc.	)	

**NATURE OF DISPUTE**

Associated Person v. Member Firm

**REPRESENTATION OF PARTIES**

J. Christopher Wehrle, Esq. of the law firm Goldberg Wehrle, LLC, located in St. Louis, Missouri represented Claimant, David J. Heger ("Heger"), hereinafter referred to as "Claimant."

Nuviah Shirazi, Esq. of A.G. Edwards & Sons, Inc., located in St. Louis, Missouri represented Respondent, A.G. Edwards & Sons, Inc. ("A.G. Edwards"), hereinafter referred to as "Respondent."

**CASE INFORMATION**

Statement of Claim filed on January 29, 2004. Claimant Heger signed the Uniform Submission Agreement on January 29, 2004.

Statement of Answer filed by Respondent A.G. Edwards on March 24, 2004. Respondent A.G. Edwards submitted an undated Uniform Submission Agreement.

Claimant filed a Motion for Leave to File Amended Statement of Claim on April 22, 2003. Respondent filed a response to Claimant's Amended Statement of Claim on May 4, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: libel and slander on Claimant's Form U-5. Claimant asserted that upon his resignation, A.G. Edwards filed a Form U-5 containing defamatory statements of Heger.

Unless specifically admitted in its Answer, Respondent A.G. Edwards denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Failure to state a claim upon which relief can be granted;
2. The legal theories brought are barred in whole or in part by the applicable statutes of limitation;
3. Based on information and belief, Claimant's claims are barred in whole or in part because any injuries or damages sustained by him were caused, in whole or in part, by Claimant and/or third parties over whom Respondent has no control and for

- whom Respondent is not responsible;
4. Respondent's acts, omission and/or other conduct relative to the claims filed herein were at all times based on reasonable, non-discriminatory factors and were made in good faith and/or for a good cause;
  5. Claimant's claims are barred in whole or in part because Respondent's actions were at all time privileged or justified; and
  6. Claimant's claims are barred, in whole or in part, because he failed to mitigate his damages, if any, and because the damages claimed are speculative, uncertain and incapable of calculation.

#### **RELIEF REQUESTED**

Claimant Heger requested expungement of Section 13's Reason for Termination and corresponding explanation on Heger's Form U-5 dated February 14, 2002, and an order requiring A.G. Edwards to amend Section 13 of Heger's Form U-5 to state Reason for Termination "Other" and corresponding explanation of "Heger and A.G. Edwards severed their employment relationship to allow Heger to pursue other business opportunities - no securities violations" and expungement of all references to this arbitration from Heger's registration records maintained by NASD CRD, compensatory damages in an amount not to exceed \$1,000,000.00, exemplary damages as are just and reasonable, attorney's fees, cost and for such other and further relief as arbitrators deem just and proper.

Respondent A.G. Edwards requested that all such claims be dismissed in their entirety and that A.G. Edwards be awarded costs and reasonable attorney's fees.

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

In a pre-hearing conference held on December 17, 2004, the Panel granted Claimant's motion to amend the Statement of Claim.

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. Any and all claims asserted by Claimant, David J. Heger, are denied.
2. Claimant David J. Heger's request for expungement of the language contained in Section 13 Reason for Termination of his Form U-5 is denied.
3. Claimant David J. Heger's request for expungement of all reference to the above arbitration from his registration records maintained by the NASD Central Registration Depository ("CRD") is denied.
4. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
5. Any and all relief not specifically addressed herein, including any 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

#### **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:

Member surcharge = \$ 2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 4,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

December 29- December 31, 2004 adjournment = \$ 1,200.00  
(waived by NASD)

#### **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: November 24, 2004 1 session

Three (3) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 3,600.00  
Pre-hearing conferences: June 21, 2004 1 session  
December 17, 2004 1 session  
January 6, 2004 1 session

Six (6) Hearing sessions @ \$1,200.00 = \$ 7,200.00  
Hearing Dates: April 12, 2005 2 sessions  
April 13, 2005 2 sessions  
April 14, 2005 2 sessions

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Total Forum Fees = \$11,250.00

1. The Panel assessed 50% of the total forum fees in the amount of \$5,625.00 solely to Claimant David J. Heger.
2. The Panel assessed 50% of the total forum fees in the amount of \$5,625.00 solely to Respondent A.G. Edwards & Sons, Inc.

**FFF SUMMARY**

## 1. Claimant, David J. Heger, is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$ 5,625.00</u>
Total Fees	= \$ 6,000.00
<u>Less payments</u>	<u>= \$ 2,125.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,875.00

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

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$ 5,625.00</u>
Total Fees	= \$12,625.00
<u>Less payments</u>	<u>= \$ 4,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 8,175.00

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

**ARBITRATION PANEL**

Leah M. Balk-Teitelbaum, Esq.	-	Public Arbitrator, Presiding Chairperson
Keith E. Mattern, Esq.	-	Public Arbitrator
Jerry M. Deters	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Leah M. Balk-Teitelbaum, Esq.  
Leah M. Balk-Teitelbaum, Esq.  
Public Arbitrator, Presiding Chairperson

4/19/05  
Signature Date

/s/ Keith E. Mattern, Esq.  
Keith E. Mattern, Esq.  
Public Arbitrator

4/20/05  
Signature Date

/s/ Jerry M. Deters  
Jerry M. Deters  
Non-Public Arbitrator

4/20/05  
Signature Date

4/20/05  
Date of Service (For NASD Dispute Resolution office use only)

**SEE SUMMARY**

1. Claimant, David J. Heger, is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 5,625.00
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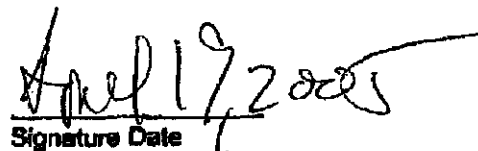
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Jerry M. Deters  
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution  
 Arbitration No. 04-00586  
 Award Page 4 of 4

### FEF SUMMARY

1. Claimant, David J. Heger, is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 5,825.00
Total Fees	= \$ 6,000.00
Less payments	= \$ 2,125.00
Balance Due NASD Dispute Resolution	= \$ 3,875.00

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

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 5,825.00
Total Fees	= \$12,825.00
Less payments	= \$ 4,450.00
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Signature Date

  
 Keith E. Mattem, Esq.  
 Public Arbitrator

4-20-05  
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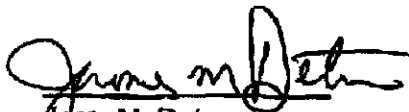
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