

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

William A. Hightower

and

Case Number: 04-01209  
Hearing Site: Houston, Texas

Names of Respondents

A.G. Edwards & Sons, Inc.,  
Albert Hugh Townsend,  
John Gillette Burns,  
Richard W. Ashcroft, David Charles Sprowl,  
Robert Louis Rogers, and Richard Frank Grabish

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**NATURE OF DISPUTE**

Associated Person v. Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

William A. Hightower ("**Claimant**") was represented by Michael P. Cash, Esq., Winstead, Sechrest & Minick, P.C., Houston, Texas and William J. Hawkins, Esq., Spring, Texas.

A.G. Edwards & Sons, Inc. ("**A.G. Edwards**"), Richard W. Ashcroft ("**Ashcroft**"), David Charles Sprowl ("**Sprowl**"), Robert Louis Rogers ("**Rogers**"), and Richard Frank Grabish ("**Grabish**") were represented by Ellen Sessions, Esq., Jenkins & Gilchrist, Dallas, Texas.

Albert Hugh Townsend ("**Townsend**") and John Gillette Burns ("**Burns**") were represented by J. Michael Black, Esq., The Law Offices of J. Michael Black, Houston, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 24, 2004. The Submission Agreement of Claimant, William A. Hightower, was signed on or about February 18, 2004. On or about May 12, 2004, Claimant filed a Response to Respondents', Albert Townsend and John Gillette Burns, Motion to Dismiss and/or Abate in addition to filing a Motion for Sanctions and a Request for Immediate Disciplinary Referral. Claimant's Response to Respondents', A.G. Edwards & Sons, Inc., Richard W. Ashcroft, David Charles Sprowl, Robert Louis Rogers, and Richard Frank Grabish, Motion to Dismiss was filed on or about

May 27, 2004. On or about July 6, 2004, Claimant filed a Supplemental Support for his Motion for Sanctions and Disciplinary Referral. On or about May 9, 2005, Claimant filed an Unopposed Motion for Leave to Amend the Statement of Claim and Motion to Postpone.

The Statement of Answer and Motion to Dismiss was filed jointly by Respondents, A.G. Edwards & Sons, Inc., Richard W. Ashcroft, David Charles Sprowl, Robert Louis Rogers, and Richard Frank Grabish, on or about May 14, 2004. The Submission Agreement of Respondent, A.G. Edwards & Sons, Inc., was signed on or about April 12, 2004. The Submission Agreement of Respondent, Richard W. Ashcroft, was signed on or about April 12, 2004. The Submission Agreement of Respondent, David Charles Sprowl, was signed on or about April 12, 2004. The Submission Agreement of Respondent, Robert Louis Rogers, was signed on or about April 12, 2004. The Submission Agreement of Respondent, Richard Frank Grabish, was signed on or about April 12, 2004. Respondents, A.G. Edwards & Sons, Inc., Richard W. Ashcroft, David Charles Sprowl, Robert Louis Rogers, and Richard Frank Grabish, filed a Reply in Support of their Motion to Dismiss on or about June 21, 2004.

A Motion to Dismiss and/or to Abate was filed jointly by Respondents, Albert Hugh Townsend and John Gillette Burns, on or about May 12, 2004. The Submission Agreement of Respondent, Albert Hugh Townsend, was signed on or about September 5, 2005. Respondents, Albert Hugh Townsend and John Gillette Burns, filed a Response to Claimant's Supplement to his Motion for Sanctions and Disciplinary Referral and a Supplement to the Answer and Motion to Dismiss on or about July 14, 2004.

### CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, intentional interference, breach of fiduciary duty, breach of duty of good faith and fair dealing, and fraud. The causes of action related to the payment of \$500,000.00 cash by Claimant for a book of business at A.G. Edwards that previously belonged to Albert Townsend. Effective September 2000, Claimant and Hightower entered into a partnership agreement, which granted Claimant a 20% interest in the partnership's production for all of Townsend's and Claimant's business with Townsend retaining 80%. Claimant alleged that on or about June 4, 2001, Townsend proposed accelerating the transfer of his book business to Claimant with Claimant paying Townsend \$500,000.00 for that accelerated transfer. This agreement was made effective September 1, 2001. At the beginning of 2002, Claimant entered into a partnership with a third broker, John Gillette Burns, where Burns would pay \$250,000.00 for half of the 80% interest purchase by Claimant from Townsend. Claimant alleged that to enable Burns to enter into the partnership, Claimant agreed to carry a promissory note for Burns. In mid 2002, Claimant alleged that Respondents conspired to have him terminated, which resulted in unjust enrichment of Townsend and Burns as well as the breach of contract and interference with the contracts entered into.

Unless specifically admitted in their Answer, Respondents, A.G. Edwards & Sons, Inc., Richard W. Ashcroft, David Charles Sprowl, Robert Louis Rogers, and Richard Frank Grabish, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant's claims are barred, in whole or in part, by comparative and/or contributory negligence; Claimant's claims are barred by the doctrine of estoppel; Claimant's claims are barred, in whole or in part, by the assumption of risk and the acceptance of the risk of loss; and Claimant failed to mitigate his damages.

Unless specifically admitted in their Answer, Respondents, Albert Hugh Townsend and John Gillette Burns, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant's damages, if any, were caused by himself and one or more breaches of duties owed by Claimant; Claimant is estopped to claim payment on the note and/or benefits derived from customers at A.G. Edwards & Sons, Inc.; and if Claimant suffered any damages, he brought them on himself and either Burns or Townsend caused them.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$500,000.00
Punitive/Exemplary Damages	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents, A.G. Edwards & Sons, Inc., Richard W. Ashcroft, David Charles Sprowl, Robert Louis Rogers, and Richard Frank Grabish, requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

Respondents, Albert Hugh Townsend and John Gillette Burns, requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent, John Gillette Burns, did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the prehearings is bound by the determination of the arbitration panel on all issues submitted.

On or about August 12, 2004, the Panel issued an Order stating that Respondents' Motions to Dismiss are denied, the Panel determined that NASD and this Panel have jurisdiction of all parties to this matter, and the Panel will carry each parties' Motions for Sanctions, etc., at this time.

On or about April 29, 2005, Claimant settled all claims against Respondents, A.G. Edwards & Sons, Inc., John Gillette Burns, Richard W. Ashcroft, David Charles Sprowl, Robert Louis Rogers, and Richard Frank Grabish.

On or about May 17, 2005, the Panel granted the Unopposed Motion for Leave to Amend the Statement of Claim and Motion to Postpone the hearing dates.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, Albert Hugh Townsend, is liable for and shall pay to Claimant, William A. Hightower, the sum of \$175,000.00 in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

## **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 300.00

### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is A.G. Edwards & Sons, Inc.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

### **Adjournment Fees**

Adjournments granted during these proceedings:

June 6-10, 2005, adjournment requested by Claimant = \$ 1,125.00  
(waived by the Panel)

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: July 22, 2004	1 session
September 1, 2005	1 session
One (1) Hearing session x \$1,125.00	= \$ 1,125.00
Hearing Date: September 6, 2005	1 session
Total Forum Fees	= \$ 3,375.00

The Arbitration Panel has assessed \$1,687.50 of the forum fees to William A. Hightower.

The Arbitration Panel has assessed \$1,687.50 of the forum fees to Albert Hugh Townsend.

### Fee Summary

Claimant, William A. Hightower, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,687.50
Total Fees	= \$1,987.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, Albert Hugh Townsend, is liable for:

Forum Fees	= \$ 1,687.50
Total Fees	= \$ 1,687.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,687.50

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

**ARBITRATION PANEL**

Sharon Jevort Hemphill, Esq. - Public Arbitrator, Presiding Chair  
Robert D. Womack - Non-Public Arbitrator  
James R. Augustine - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Sharon Jevort Hemphill, Esq.  
Sharon Jevort Hemphill, Esq.  
Public Arbitrator, Presiding Chair

September 17, 2005  
Signature Date

/s/ Robert D. Womack  
Robert D. Womack  
Non-Public Arbitrator

September 15, 2005  
Signature Date

/s/ James R. Augustine  
James R. Augustine  
Non-Public Arbitrator

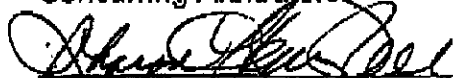
September 15, 2005  
Signature Date

September 16, 2005  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Sharon Jevett Hemphill, Esq. - Public Arbitrator, Presiding Chair  
Robert D. Womack - Non-Public Arbitrator  
James R. Augustine - Non-Public Arbitrator

Concurring Arbitrators:

  
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Sharon Jevett Hemphill, Esq.  
Public Arbitrator, Presiding Chair

9-17-05  
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Signature Date

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Robert D. Womack  
Non-Public Arbitrator

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Signature Date

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James R. Augustine  
Non-Public Arbitrator

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9-15-2005  
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Signature Date

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