

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimants

James R. and Mary C. Hentrich

Case Number: 04-01549

Name of the Respondents

A.G. Edwards & Sons, Inc. and  
Anne Jacobi

Hearing Site: St. Louis, Missouri

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**NATURE OF DISPUTE**

Customers vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Mark C. Goldenberg, Esq. of the law firm Goldenberg, Miller, Heller & Antognoli, P.C., located in Edwardsville, Illinois represented Claimants, James R. and Mary C. Hentrich ("Hentrich"), hereinafter referred to as "Claimants."

Jeffrey W. Coverdell, Esq. of A.G. Edwards & Sons, Inc., located in St. Louis, Missouri, represented the Respondents, A.G. Edwards & Sons, Inc. ("Edwards") and Anne Jacobi ("Jacobi"), hereinafter collectively referred to as "Respondents."

**CASE INFORMATION**

Statement of Claim filed on March 3, 2004. Claimants Hentrich jointly signed the Uniform Submission Agreement on February 27, 2004.

Statement of Answer filed by Respondents Edwards and Jacobi on April 29, 2004. Respondent Edwards signed the Uniform Submission Agreement on March 18, 2004. Respondent Jacobi signed the Uniform Submission Agreement on March 17, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty and negligence. The causes of action relate to various Putnam funds, including Putnam Global Growth Fund, Putnam Voyager, Putnam Health Sciences Trust, Putnam OTC & Emerging Growth Fund and Putnam New Opportunities Fund. Claimants asserted that Respondents were negligent and breached their duty in providing sound and conservative financial advice and making a proper assessment of Claimants' retirement plans and investment needs.

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

1. Claimants fail to state a claim upon which relief can be granted.
2. The claim fails to state a claim for relief, as there is no private cause of action for the violation of such rules or regulations.
3. Claimants failed to act promptly and with due diligence to mitigate their damages after Claimants knew or should have known of the alleged acts and omissions of which Claimants complain. To the extent Claimants' alleges damages were sustained after such time, Claimants are barred from recovering such damages.
4. Claimants' claims are barred because they authorized the alleged conduct, which occurred in connection with their accounts with Respondents about which they now complaint.
5. Claimants have waived and/or estopped from asserting their claims against Respondents by virtue of their conduct and dealings with Respondents.
6. Claimants ratified the alleged conduct about which they complain and, therefore, their claims are barred.
7. Claimants' claims are barred in full or in part by applicable statutes of limitation.
8. Claimants are barred from any recovery for any of the alleged conduct of Respondents by the doctrine of laches.
9. Claimants' claims are barred in full or in part by their assumption of the risks, as they understood the risks inherent with investing and chose to make those investments.
10. As a result of Claimants' failure to object or notify Edwards of the acts and omissions of which Claimants complain after receipt of written confirmations, account statements and other documents evidencing or setting forth transactions in Claimants' accounts, Claimants are barred from recovering from Edwards under Claimants' Client Agreements with Edwards and under Section 8-319 of the Uniform Commercial Code.
11. Claimants are barred from recovering under the doctrines of ratification, accounts stated, estoppel, waiver and laches because Respondents relied upon Claimants' silence and inaction.
12. Claimants have alleged no activity or specific conduct which resulted in negligence on behalf of Respondents and any claims based upon the theory of negligence should be dismissed.
13. The alleged damages which Claimants alleged to have suffered were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in their accounts for which Respondents are neither liable nor responsible.
14. Claimants caused or contributed to cause the alleged damages of which Claimants complain herein and are thus barred by their contributory negligence from recovering such alleged damages from Respondents.
15. Respondents were not negligent, however, if found to be negligent in any respect, Claimants' negligence was equal to or greater than any negligence on the part of Respondents, and for this reason, Claimants' claims must be dismissed or reduced under the doctrines of contributory negligence, comparative fault or comparative negligence in accordance with applicable law.

#### **RELIEF REQUESTED**

Claimants requested \$200,000.00 in compensatory damages; attorney's fees; interest; and for such other and further relief as the Panel deems just and proper.

Respondents requested dismissal of all claims in their entirety with prejudice; costs; for the expungement of this matter from Respondent Jacobi's CRD record; and for such other relief deemed just and proper.

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

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 Claimants, James R. and Mary C. Hentrich, are denied.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Anne Jacobi's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-90 and 99-54, Respondent Jacobi must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
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	= \$ 300.00
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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 party and is assessed the following fees:

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

##### **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 Panel @ \$1,125.00 = \$1,125.00  
Pre-hearing conference: July 23, 2004 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$4,500.00  
Hearing Dates: April 19, 2005 2 sessions  
April 20, 2005 2 sessions

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Total Forum Fees = \$5,625.00

1. The Panel assessed 50% of the total forum fees in the amount of \$2,812.50 jointly to Claimants, James R. and March C. Hentrich.
2. The Panel assessed 50% of the total forum fees in the amount of \$2,812.50 jointly and severally to Respondents, A.G. Edwards & Sons, Inc. and Anne Jacobi.

#### SEE SUMMARY

1. Claimants Hentrich are jointly liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$3,112.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$1,687.50

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

Member Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents, A.G. Edwards & Sons, Inc. and Anne Jacobi, are jointly and severally liable for:

Forum Fees	= \$2,812.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$2,812.50

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

#### ARBITRATION PANEL

David B. Lacks, J.D.	-	Public Arbitrator, Presiding Chairperson
John R. Loss	-	Public Arbitrator
Lynn D. Newton	-	Non-Public Arbitrator

#### Concurring Arbitrators' Signatures

/s/ David B. Lacks, J.D.  
David B. Lacks, J.D.  
Public Arbitrator, Presiding Chairperson

4/26/05  
Signature Date

/s/ John R. Loss

John R. Loss

Public Arbitrator

4/25/05

Signature Date

/s/ Lynn D. Newton

Lynn D. Newton

Non-Public Arbitrator

4/25/05

Signature Date

4/26/05

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

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Less payments	= \$ 0.00
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 Public Arbitrator, Presiding Chairperson

  
 Signature Date

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Arbitration No. 04-01549  
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John R. Loss  
Public Arbitrator

4/25/05  
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Public Arbitrator

  
Lynn D. Newton  
Non-Public Arbitrator

April 25, 2005  
Signature Date

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