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

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In the Matter of the Arbitration Between:

Names of the Claimants

Ward and Sharon Bennett

Case Number: 04-02107

Names of the Respondents

A.G. Edwards & Sons, Inc.

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Robert Wood

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Ward and Sharon Bennett, hereinafter collectively referred to as "Claimants": Randall C. Place, Esq., Blum and Silver, LLP, Coral Springs, Florida.

For Respondent A.G. Edwards & Sons, Inc. ("AGE") and Respondent Robert Wood ("Wood"): Clay L. Grumke, Esq., in-house counsel for A.G. Edwards & Sons, Inc., St. Louis, Missouri.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Respondent Wood: Alan M. Wolper, Esq. and Myra Mormile, Esq., Sutherland Asbill & Brennan LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: March 25, 2004.

Claimants signed the Uniform Submission Agreements: March 23, 2004.

Statement of Answer filed by Respondents AGE and Wood on or about: May 19, 2004.

Statement of Answer filed by Respondents Merrill and Wood on or about: June 24, 2004.

Respondent AGE signed the Uniform Submission Agreement: April 19, 2004.

Respondent Merrill signed the Uniform Submission Agreement: April 27, 2004.

Respondent Wood signed the Uniform Submission Agreement: May 7, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: suitability; breach of contract; breach of fiduciary duty; common law fraud; negligence; negligent supervision; and, NASD/NYSE rule violations. The causes of action relate to the purchase in Claimants' portfolio of various mutual funds and common stocks, including, but not limited to, the following: FT Finl Services Growth Portfolio; FT Core Hldgs Equity Growth; FT Bandwidth Select Portfolio; FT Software Innovations Select Portfolio; FT Technology Growth Portfolio; FT Fiber Optics Growth; FT Nasdaq 100; Janus Orion Fund; Putnam Funds Technology Fund; Putnam Intl New Opportunities

Fund; American Century Intl Growth Fund; Janus Special Situations Fund; Lord Abbett Dev Growth Fund; SBC Communications; and, Bellsouth.

Unless specifically admitted in their Answers, Respondents denied any and all allegations made in the Statement of Claim and asserted, among other things, the following defenses: failure to state a claim; equitable doctrines of waiver, laches, unclean hands and estoppel; Claimants authorized, directed and ratified all of the transactions in their accounts; all activity was suitable; maintenance of an adequate system of supervision and control over employees, and actions at all times made in good faith; Claimants' contributory negligence; doctrine of setoff; failure to mitigate; statutes of limitations.

### **RELIEF REQUESTED**

Claimants requested (1) compensatory damages in the amount of \$500,000.00; (2) interest at the legal rate from the date of purchase, or reasonable market return; (3) rescission; (4) punitive damages; (5) the costs of this proceeding; and, (6) such other relief as deemed just and proper.

Respondents requested that the Panel issue an award (1) dismissing the Statement of Claim in its entirety; (2) assessing all forum fees and costs against Claimants; (3) recommending the expungement of all references to this arbitration proceeding from the NASD Central Registration Depository ("CRD") record of Respondent Wood; and, (4) granting Respondents such other, further, and different relief as deemed just and proper by this Panel.

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

On or about July 27, 2005, the Panel issued an Order assessing a \$300.00 fee in connection with the parties' last minute cancellation of a pre-hearing conference that was scheduled to occur on July 27, 2005. The Panel assessed the \$300.00 fee as follows: \$100.00 jointly and severally to Claimants; \$100.00 to Respondent AGE; and, \$100.00 to Respondent Merrill.

On or about August 17, 2005, the parties filed with NASD Dispute Resolution a notice of settlement.

On or about August 31, 2005, the parties filed with NASD Dispute Resolution a proposed Stipulated Award for the Panel's consideration. The proposed Stipulated Award contained a provision which stated that Claimants and Respondents entered into confidential settlement agreements. In connection with these agreements, Claimants dismissed all claims, with prejudice, against Respondents.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

After considering the pleadings and the proposed Stipulated Award filed by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are hereby denied and dismissed, with prejudice;
2. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Wood's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Member 99-09 and 99-54, Respondent Wood must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. Each party shall bear their own costs and expenses associated with the above-referenced arbitration, including attorneys' fees, except as fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD will retain or collect the non-refundable filing fees 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 person at the time of the events giving rise to the dispute. Accordingly, Respondents Merrill and AGE are member firms and parties.

Respondent Merrill's Member surcharge	= \$1,700.00
Respondent Merrill's Pre-hearing process fee	= \$ 750.00
<u>Respondent Merrill's Hearing process fee</u>	<u>= \$2,750.00</u>
Respondent Merrill's Total Member Fees	= \$5,200.00

Respondent AGE's Member surcharge	= \$1,700.00
Respondent AGE's Pre-hearing process fee	= \$ 750.00
<u>Respondent AGE's Hearing process fee</u>	<u>= \$2,750.00</u>
Respondent AGE's Total Member Fees	= \$5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournments fees were assessed in this matter.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were assessed in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were assessed in this matter.

**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 the Panel @ \$1,125.00 per session	= \$1,125.00
Pre-hearing conference: September 28, 2004 1 session	

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Total Forum Fees	= \$1,125.00
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The Panel has assessed forum fees in the amount of \$281.25 to Claimants, jointly and severally.

The Panel has assessed forum fees in the amount of \$281.25 to Respondent Merrill.

The Panel has assessed forum fees in the amount of \$281.25 to Respondent AGE.

The Panel has assessed forum fees in the amount of \$281.25 to Respondent Wood.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 281.25
Costs	= \$ 100.00
Total Fees	= \$ 681.25
Less payments	= \$ 681.25
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent AGE is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$ 281.25

Costs	= \$ 100.00
Total Fees	= \$5,581.25
Less payments	= \$5,581.25
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$ 281.25
Costs	= \$ 100.00
Total Fees	= \$5,581.25
Less payments	= \$5,581.25
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Wood is solely liable for:

Forum Fees	= \$ 281.25
Total Fees	= \$ 281.25
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 281.25

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

**ARBITRATION PANEL**

Kimberly A. Gilmour, Esq.	-	Public Arbitrator, Presiding Chairperson
Irving Wolinsky, DDS	-	Public Arbitrator
Dale W. Oliver	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Kimberly A. Gilmour, Esq.  
Public Arbitrator, Presiding Chairperson

September 6, 2005  
Signature Date

/s/  
Irving Wolinsky, DDS  
Public Arbitrator

September 6, 2005  
Signature Date

/s/  
Dale W. Oliver  
Non-Public Arbitrator

September 9 [sic], 2005  
Signature Date

September 8, 2005  
Date of Service (For NASD Dispute Resolution office use only)

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<u>Costs</u>	= \$ 100.00
<u>Total Fees</u>	= \$5,581.25
<u>Less payments</u>	= \$5,581.25
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$ 281.25
<u>Costs</u>	= \$ 100.00
<u>Total Fees</u>	= \$5,581.25
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Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Wood is solely liable for:

<u>Forum Fees</u>	= \$ 281.25
<u>Total Fees</u>	= \$ 281.25
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Irving Wolinsky, DDS  
Dale W. Oliver

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

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Kimberly A. Gilmour, Esq.  
Public Arbitrator, Presiding Chairperson

9/6/05  
Signature Date

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Public Arbitrator

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Signature Date

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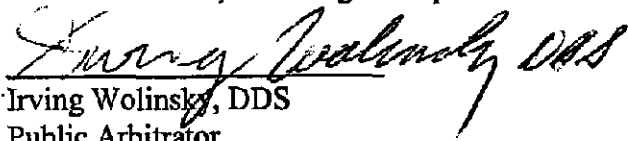
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