

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

A.G. Edwards & Sons, Inc.

Case Number: 04-03091

Name of the Respondent

SG Cowen Securities Corp.

Hearing Site: St. Louis, Missouri

Name of Third-Party Respondent

Lehman Brothers, Inc.

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**NATURE OF DISPUTE**

Member Firm vs. Member Firms

**REPRESENTATION OF PARTIES**

Matthew Salamon, Esq. of A.G. Edwards & Sons, Inc., located in St. Louis, Missouri, represented Claimant, A.G. Edwards & Sons, Inc., hereinafter referred to as "A.G. Edwards."

Joseph J. Sullivan, Esq. of Sheindlin & Sullivan, LLP, located in New York, New York, represented the Respondent, SG Cowen Securities Corp., hereinafter referred to as "SG Cowen."

William Olshan, Esq. of Lehman Brothers, Inc., located in New York, New York, represented the Third-Party Respondent, Lehman Brothers, Inc., hereinafter referred to as "Lehman."

**CASE INFORMATION**

Statement of Claim filed on April 16, 2004. An Amended Statement of Claim filed on August 13, 2004. A.G. Edwards signed the Uniform Submission Agreement on April 27, 2004.

Statement of Answer, Motion to Dismiss and Third-Party Claim filed by SG Cowen on December 13, 2004. SG Cowen signed the Uniform Submission Agreement on January 31, 2005.

A.G. Edwards filed a response to SG Cowen's Motion to Dismiss on December 29, 2004.

Statement of Answer to Third-Party Claim and Motion to Dismiss filed by Lehman on April 19, 2005. Lehman signed the Uniform Submission Agreement on April 19, 2005.

A.G. Edwards filed a response to Lehman's Motion to Dismiss on May 2, 2005. SG Cowen filed a response to Lehman's Motion to Dismiss on June 3, 2005.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract and indemnification. The causes of action relate to the purchase transaction of 73,000 International Reconstruction and Development Bank zero coupon bonds scheduled for maturity in February 2008, which SG Cowen failed to deliver.

Unless specifically admitted in its Answer, SG Cowen denied the allegations made in the Statement of Claim and asserted that the bonds that A.G. Edwards agreed to purchase from SG Cowen were bonds that SG Cowen had agreed to purchase from Lehman, and Lehman failed to deliver the bonds to SG Cowen. It also asserted the following defenses:

- (1) The Statement of Claim fails to state a claim upon which relief can be granted.
- (2) A.G. Edwards has failed to mitigate its damages.
- (3) Any damages were caused by A.G. Edwards' own independent conduct and decisions.
- (4) The claims are barred by the equitable defenses of estoppel, waiver ratification and laches.
- (5) A.G. Edwards waived its right to delivery of the bonds.
- (6) SG Cowen acted solely as an intermediary between A.G. Edwards and Lehman. SG Cowen is not liable in its capacity as an intermediary for Lehman's failure to deliver the bonds to SG Cowen.
- (7) The claim is barred, in whole or in part, by the applicable statutes of limitation.

Unless specifically admitted in its Answer, Lehman denied the allegations made in the Statement of Claim and Third-Party Claim. Lehman also asserted there is no dispute that the event or occurrence giving rise to both the claims of A.G. Edwards against SG Cowen and SG Cowen's third-party claim against Lehman was the alleged failure to deliver bonds and that this occurred more than 8 years before A.G. Edwards filed the initial Statement of Claim. Therefore, these claims are clearly barred by Rule 10304 of the NASD Code of Arbitration and by the applicable New York Statute of Limitations requiring actions based upon contractual obligations or liabilities to be commenced within six (6) years.

### **RELIEF REQUESTED**

A.G. Edwards requested an award directing SG Cowen to tender 54,000 International Bank bonds, or, in the alternative, compensatory damages in the amount of \$100,000.00, plus costs, attorney's fees and for any other and further relief deemed appropriate.

SG Cowen requested that in the event NASD fails to dismiss this matter pursuant to Rule 10304 of the NASD Code of Arbitration, the Panel order Lehman to deliver to SG Cowen any bonds that SG Cowen is required to deliver to A.G. Edwards, or in the alternative, that Lehman must pay the amount of money damages, including any costs and attorney's fees to SG Cowen that is awarded to A.G. Edwards.

Lehman requested dismissal of A.G. Edwards statement of claim in its entirety and a dismissal of SG Cowen's third-party claim against Lehman.

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

A telephonic pre-hearing conference was held on June 14, 2005 to hear arguments on SG Cowen and Lehman's Motions to Dismiss. In an Order dated June 14, 2005, the Panel granted SG Cowen and Lehman's motions and dismissed SG Cowen and Lehman with prejudice from this matter.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the pre-hearing conference of June 14, 2005, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Any and all claims asserted by A.G. Edwards & Sons, Inc. against SG Cowen Securities Corp. are dismissed with prejudice.
2. Any and all claims asserted by SG Cowen's Third-Party Claim against Lehman Brothers, Inc. are dismissed with prejudice.
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	= \$1,000.00
Third Party Claim filing fee	= \$ 500.00

#### **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, SG Cowen and Lehman are all parties to this proceeding and are all assessed the following fees:

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

#### **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:

Two (2) Pre-hearing sessions @ \$1,000.00	= \$2,000.00
Pre-hearing Dates: March 1, 2005      1 session	
June 14, 2005      1 session	
<hr/> Total Forum Fees	<hr/> = \$2,000.00

1. The Panel assessed \$666.68 of the total forum fees solely to A.G. Edwards & Sons, Inc.
2. The Panel assessed \$666.66 of the total forum fees solely to SG Cowen Securities Corp.
3. The Panel assessed \$666.66 of the total forum fees solely to Lehman Brothers, Inc.

**FFF SUMMARY**

1. Claimant, A.G. Edwards & Sons, Inc. is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$4,050.00
<u>Forum Fees</u>	= \$ 666.68
Total Fees	= \$5,716.68
<u>Less payments</u>	= \$5,800.00
Refund Due NASD Dispute Resolution	= \$ 83.32

2. Respondent, SG Cowen Securities Corp., is solely liable for:

Third-Party Filing Fee	= \$ 500.00
Member Fees	= \$4,050.00
<u>Forum Fees</u>	= \$ 666.66
Total Fees	= \$5,216.66
<u>Less payments</u>	= \$6,983.33
Refund Due NASD Dispute Resolution	= \$1,766.67

3. Respondent, Lehman Brothers, is solely liable for:

Member Fees	= \$4,050.00
<u>Forum Fees</u>	= \$ 666.66
Total Fees	= \$4,716.66
<u>Less payments</u>	= \$4,050.00
Balance Due NASD Dispute Resolution	= \$ 666.66

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

**ARBITRATION PANEL**

Bryan Goetz	-	Public Arbitrator, Presiding Chairperson
Thomas A. Cipolla, Esq.	-	Public Arbitrator
Stanley F. Van Sant	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**/s/ Bryan Goetz

Bryan Goetz  
Public Arbitrator, Presiding Chairperson

6/24/05

Signature Date

/s/ Thomas A. Cipolla, Esq.

Thomas A. Cipolla, Esq.

Public Arbitrator

6/23/05

Signature Date

/s/ Stanley F. Van Sant

Stanley F. Van Sant

Non-Public Arbitrator

6/24/05

Signature Date

6/24/05

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

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2. The Panel assessed \$666.66 of the total forum fees solely to SG Cowen Securities Corp.
3. The Panel assessed \$666.66 of the total forum fees solely to Lehman Brothers, Inc.

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Less payments	= \$5,800.00
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2. Respondent, SG Cowen Securities Corp., is solely liable for:	
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Total Fees	= \$5,216.66
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Forum Fees	= \$ 666.66
Total Fees	= \$4,716.66
Less payments	= \$4,050.00
Balance Due NASD Dispute Resolution	= \$ 666.66

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**Concurring Arbitrators' Signatures**

  
Bryan Goetz  
Public Arbitrator, Presiding Chairperson

6/24/05  
Signature Date

NASD Dispute Resolution

Arbitration No. 04-03091

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Thomas A. Cipolla, Esq.

Public Arbitrator

  
Signature Date

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Stanley F. Van Sant

Non-Public Arbitrator

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Signature Date

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NASD Dispute Resolution  
Arbitration No. 04-03091  
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Thomas A. Cipolla, Esq.  
Public Arbitrator

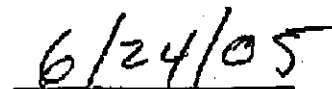
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Signature Date

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Stanley F. Van Sant  
Non-Public Arbitrator

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