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

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In the Matter of the Arbitration Between:

Name of the Claimant

Robert A. Payne, Rollover IRA

Case Number: 04-03313

Names of the Respondents

A.G. Edwards & Sons, Inc.  
Lee Dudley

Hearing Site: Atlanta, Georgia

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

**REPRESENTATION OF PARTIES**

For Robert A. Payne, Rollover IRA, hereinafter referred to as "Claimant": Edward J. Dovin, Esq., Gard Smiley Bishop & Dovin LLP, Atlanta, Georgia.

For A.G. Edwards & Sons, Inc. ("A.G. Edwards") and Lee Dudley ("Dudley"), hereinafter collectively referred to as "Respondents": William S. Port, Esq., A.G. Edwards & Sons, Inc., St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: May 4, 2004.

Claimant signed the Uniform Submission Agreement: May 10, 2004.

Statement of Answer filed by Respondents on or about: July 7, 2004.

Respondent A.G. Edwards signed the Uniform Submission Agreement: July 7, 2004.

Respondent Dudley signed the Uniform Submission Agreement: June 10, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; negligence; breach of NASD and NYSE Rules; breach of contract; breach of duty; common law fraud and misrepresentation; violation of the Georgia Securities Act of 1973; and, respondeat superior. The causes of action relate to the purchase in Claimant's account of various technology and telecommunications stocks including, but not limited to the following: Human Genome Sciences; Palm; Sun Microsystems; EMC; Tyco; I<sup>2</sup> Technologies; Qualcomm; Lowes; Southern Company; Johnson & Johnson; Capital One Financial; and, Thornburg Mortgage.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested actual damages in the amount of \$1,500,000.00, an unspecified amount of punitive damages, costs including expenses and disbursements, interest, attorneys' fees, and such other relief as the arbitration panel deems just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety, that Respondents be awarded their costs and expenses incurred in defending the action and expungement of Respondent Dudley's NASD Central Registration Depository (the "CRD") records.

**OTHER ISSUES CONSIDERED AND DECIDED**

During the evidentiary hearing on or about July 13, 2005, Respondents asserted an ore tenus request that the Panel enter an Order expunging this matter from the NASD CRD records of Respondent Dudley. Claimant did not object to this request.

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, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

Respondents, jointly and severally, are liable and shall pay to Claimant compensatory damages in the amount of \$500,000.00, plus interest at the rate of 6% per annum from April 1, 2000 until the date of payment of the Award.

Respondents, jointly and severally, are liable and shall pay to Claimant \$500.00 representing reimbursement of the non-refundable claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Respondents, jointly and severally, are liable and shall reimburse Claimant all reasonable and documented costs and expenses, excluding attorneys' fees, incurred by Claimant in connection with this arbitration proceeding, including travel and communication expenses as well as expert witness fees. The Panel refers the determination on the amount of costs and expenses to a court of competent jurisdiction.

Respondents' request to expunge this matter from the NASD CRD records of Respondent Dudley is denied.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and attorneys' fees, are denied.

**FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 500.00

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent A.G. Edwards is a party and a member firm.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

**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:

There were no three-day cancellation fees assessed during these proceedings.

**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.

There were no injunctive relief fees assessed during these proceedings.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: September 27, 2004 1 session	

Six (6) Hearing sessions with the Panel @ \$1,200.00/session	= \$ 7,200.00
Hearing Dates: July 12, 2005	2 sessions
July 13, 2005	2 sessions
July 14, 2005	2 sessions

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Total Forum Fees	= \$ 8,400.00
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The Panel has assessed \$8,400.00 of the forum fees jointly and severally to Respondents.

**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 assessed during these proceedings.

**Fee Summary**

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent A.G. Edwards is solely liable for:

<u>Member Fees</u>	= \$8,550.00
<u>Total Fees</u>	= \$8,550.00
<u>Less payments</u>	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$8,400.00
<u>Total Fees</u>	= \$8,400.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$8,400.00

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

**ARBITRATION PANEL**

N. John Garcia	-	Public Arbitrator, Presiding Chairperson
David D. Brown, Esq.	-	Public Arbitrator
S. Bennett Whipple	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

07/25/05

\_\_\_\_\_  
N. John Garcia  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

/s/

08/01/05

\_\_\_\_\_  
S. Bennett Whipple  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

**Dissenting Arbitrator's Signature**

/s/

07/25/05

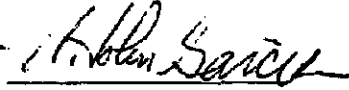
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David D. Brown, Esq.  
Public Arbitrator

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Signature Date

08/01/2005

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

**Concurring Arbitrators' Signatures**



N. John Garcia  
Public Arbitrator, Presiding Chairperson

9-25-05

Signature Date

S. Bennett Whipple  
Non-Public Arbitrator

Signature Date

**Dissenting Arbitrator's Signature**

David D. Brown, Esq.  
Public Arbitrator

Signature Date

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

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NASD Dispute Resolution

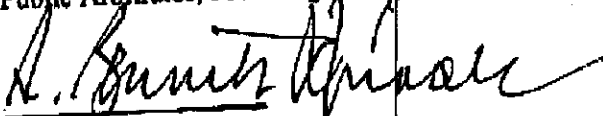
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Concurring Arbitrators' Signatures

N. John Garcia

Public Arbitrator, Presiding Chairperson



S. Bennett Whipple

Non-Public Arbitrator

Signature Date

8/1/2005

Signature Date

Dissenting Arbitrator's Signature

David D. Brown, Esq.

Public Arbitrator

Signature Date

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

NASD Dispute Resolution

Arbitration No. 04-03313

Award Page 5 of 5Concurring Arbitrators' SignaturesN. John Garcia

Public Arbitrator, Presiding Chairperson

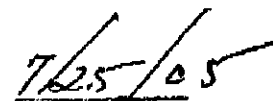
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Non-Public Arbitrator

Signature DateDisputing Arbitrator's Signature

David D. Brown, Esq.

Public Arbitrator

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