

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:)	
)	
<u>Name of the Claimant</u>)	<u>Case Number:</u> 04-03440
Barry N. Rosenblum, Trustee of the)	
Barry N. Rosenblum MD PC Profit Sharing Plan)	
Dtd 1-1-92)	
)	
<u>Name of the Respondent</u>)	<u>Hearing Site:</u> St. Louis, Missouri
A.G. Edwards & Sons, Inc.)	

NATURE OF DISPUTE

Customer vs. Member Firm

REPRESENTATION OF PARTIES

Ronald L. Rothman, Esq. of the law firm Librach & Rothman, P.C., located in St. Louis, Missouri, represented Claimant, Barry N. Rosenblum, Trustee of the Barry Rosenblum MD PC Profit Sharing Plan Dtd 1-1-92 ("Rosenblum"), hereinafter referred to as "Claimant."

Clay L. Grumke, Esq. of A.G. Edwards & Sons, Inc., located in St. Louis, Missouri, represented the Respondent, A.G. Edwards & Sons, Inc. ("A.G. Edwards"), hereinafter referred to as "Respondent."

CASE INFORMATION

Statement of Claim filed on May 5, 2004. Claimant Rosenblum signed the Uniform Submission Agreement on May 5, 2004.

Motion to Dismiss, Motion for More Particular Statement, Statement of Answer and Counterclaim filed by Respondent A.G. Edwards on July 26, 2004. Respondent A.G. Edwards signed the Uniform Submission Agreement on July 26, 2004.

Claimant Rosenblum filed a response on August 9, 2004 to A.G. Edwards' Motion to Dismiss on Grounds of Ineligibility, and reserved his right to respond to A.G. Edwards Motion for More Particular Statement and Counterclaim until the Arbitration Panel has made a determination to Respondent's Motion to Dismiss.

Respondent A.G. Edwards filed a reply to Rosenblum's response on September 9, 2004. On September 22, 2004, Claimant Rosenblum filed a further reply to A.G. Edwards' September 9, 2004 reply to Rosenblum's response to the Motion to Dismiss.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, negligence, failure to supervise, transfer, breach of fiduciary duty and misrepresentations. The causes of action relate to a transfer of funds and creation of Account No. 495-051021 without Claimant's

knowledge and/or authorization. Claimant further asserted that funds from said account were improperly disbursed to or for the benefit of persons other than Claimant, and without his authority to pay, loan or disburse funds in any manner.

Unless specifically admitted in its Answer, Respondent A.G. Edwards denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted because there is no legal basis set out for any recovery in Claimant's Statement of Claim;
2. Claimant is barred from recovering from A.G. Edwards under the doctrines of ratification, account stated, estoppel, waiver of laches because A.G. Edwards relief on Claimant's silence;
3. Claimant was aware from the outset of the risk of loss associated with investing in securities and voluntarily assumed such risk. Claimant's knowing and voluntary assumption of such risk was the sole and proximate cause of any alleged damages;
4. Claimant has ratified the alleged conduct about which Claimant complains;
5. Claimant's Statement of Claim fails to state a claim upon which relief can be granted because there is no private right of action for alleged violation of industry rules and regulations;
6. Claimant is barred from recovering from A.G. Edwards under Claimant's Customer Agreement and under Section 8-319 of the Uniform Commercial Code as enacted in the state of Missouri;
7. Claimants has asserted no statutory or legal basis for an award of attorney's fees or punitive damages in this case;
8. Respondent did not maintain control over Claimant's account, did not engage in excessive trading in Claimant's account, and had no improper purpose in recommending the transactions in Claimant's account other than to comply with the stated investment objections for the account;
9. Respondent did not recommend securities that were unsuitable;
10. Claimant failed to act promptly and with due diligence to mitigate his damages after Claimant knew or should have known of the alleged acts and omissions of which Claimant complains. To the extent Claimant alleges damages were sustained after such time Claimant is therefore barred from recovering such damages;
11. Claimant caused or contributed to cause the alleged damages of which Claimant complains herein, and if any award of damages is made, it must be reduced by the percentage of liability assessed to the Claimant;
12. All claims for relief in Claimant's Statement of Claim are barred by the applicable statutes of limitation as set forth in all applicable statutes, rules and regulations;
13. Claimant has alleged no activity or specific conduct which resulted in a breach of contract by A.G. Edwards;
14. Claimant has alleged no activity or specific conduct which resulted in a breach of fiduciary duty; and
15. Claimant has failed to allege or plead any facts that would be a violation of the Missouri Security Act. Accordingly, Claimant has no viable claim under the Act and has no right to relief under the Act, including any claim for damages, interest or attorney's fees.

RELIEF REQUESTED

Claimant Rosenblum requested \$168,454.43 in compensatory damages; \$1,000,000.00 in punitive damages; costs and attorney's fees.

Respondent A.G. Edwards requested in its Counterclaim the amount of \$75,000.00 for the filing of frivolous and unfounded claims brought by Rosenblum against A.G. Edwards; and the dismissal of Claimant's claims in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel conducted a pre-hearing conference on December 15, 2004 to hear arguments relating to A.G. Edwards' Motion to Dismiss, including responses and replies filed thereto. After reviewing the parties' submissions and having heard the parties' arguments, the Panel entered the following Order dated December 15, 2004:

After deliberation, the arbitrators rule that Respondent's Motion to Dismiss Claimant's claims in its entirety is sustained, and Claimant's claims are thereby dismissed in its entirety from this arbitration, without prejudice.

AWARD

After considering the pleadings, the testimony and evidence presented at the pre-hearing conference of December 15, 2004, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Any and all claims asserted by Claimant, Barry N. Rosenblum, as Trustee for the Barry N. Rosenblum, MD PC Profit Sharing Plan Dtd 1-1-92, are hereby dismissed without prejudice.
2. Except as otherwise specified herein, parties shall bear their own costs, including attorney's fees.
3. Any and all relief not specifically addressed herein, including punitive damages, is dismissed without prejudice.

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	= \$ 500.00
Counterclaim filing fee	= \$ 1,000.00

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 & Sons, Inc. is a party and is assessed the following:

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: October 21, 2004 1 session	
December 15, 2004 1 session	
Total Forum Fees	= \$ 2,400.00

1. The Panel assessed 50% of the total forum fees in the amount of \$1,200.00 solely to Claimant Barry N. Rosenblum.
2. The Panel assessed 50% of the total forum fees in the amount of \$1,200.00 solely to Respondent A.G. Edwards & Sons, Inc.

SEE SUMMARY

1. Claimant, Barry N. Rosenblum, is solely liable for:	
Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 1,700.00
<u>Less payments</u>	<u>= \$ 1,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
2. Respondent, A.G. Edwards & Sons, Inc., is solely liable for:	
Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,550.00
<u>Forum Fees</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 5,750.00
<u>Less payments</u>	<u>= \$11,350.00</u>
Refund Due from NASD Dispute Resolution	= \$ 5,600.00

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

ARBITRATION PANEL

Albert J. Haller	-	Public Arbitrator, Presiding Chairperson
Bradley B. Salus	-	Public Arbitrator
Lynn D. (Doug) Newton	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Albert Haller

Albert J. Haller
Public Arbitrator, Presiding Chairperson

4/5/05

Signature Date

Signature to follow

Bradley B. Salus
Public Arbitrator

Signature Date

/s/ Lynn D. Newton

Lynn D. (Doug) Newton
Non-Public Arbitrator

4/5/05

Signature Date

4/8/05

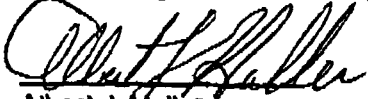
Date of Service (For NASD Dispute Resolution office use only)

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Bradley B. Salus
Lynn D. (Doug) Newton

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

Concurring Arbitrators' Signatures



Albert J. Haller
Public Arbitrator, Presiding Chairperson

April 5, 2005
Signature Date

Bradley B. Salus
Public Arbitrator

Signature Date

Lynn D. (Doug) Newton
Non-Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chairperson

Signature Date

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Public Arbitrator

Signature Date

Lynn D. (Doug) Newton
Non-Public Arbitrator

Lynn D (Doug) Newton

Signature Date *April 5, 2005*

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