

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Gale M. Kuznicki, Individually and  
as Trustee for the Henry Kuznicki  
Trust, and on behalf of her IRA

Case Number: 04-03445

Name of the Respondent

A.G. Edwards & Sons, Inc.

Hearing Site: Orlando, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Gale M. Kuznicki, Individually and as Trustee for the Henry Kuznicki Trust, and on behalf of her IRA, hereinafter collectively referred to as "Claimants": Philip J. Snyderburn, Esq., Snyderburn, Rishoi & Swann, Orlando, Florida.

For A.G. Edwards & Sons, Inc., hereinafter referred to as "Respondent": J. Carlton Mitchell, Esq., Sivyer Barlow & Watson, P.A., Tampa, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: May 7, 2004.

Claimants signed the Uniform Submission Agreement on: May 7, 2004.

Statement of Answer filed on or about: July 12, 2004.

Respondent signed the Uniform Submission Agreement on: June 25, 2004.

Respondent's Objection to and Motion to Strike Portion of Claimant's Damages

Summary filed on or about: August 1, 2006.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) fraudulent inducement; 2) breach of fiduciary duty; 3) negligence; and 4) breach of contract. The causes of action relate to Claimant's investment in bonds, mutual funds, common stock and annuities including, but not limited to, Rockwell stock and Franklin Federal Tax Free Income Fund Class A bonds.

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

**RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in the amount of \$178,146.00; 2) interest; 3) punitive damages; and 4) costs of the proceeding.

Respondent requested: 1) dismissal, with prejudice, of the Statement of Claim; 2) costs; and 3) any other and further relief as the Panel deems appropriate under the facts and circumstances.

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

During the evidentiary hearing, the Panel denied Respondent's Objection to and Motion to Strike Portion of Claimants' Damages Summary.

The parties have 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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for negligence and shall pay to Claimants compensatory damages in the amount of \$45,000.00, plus simple interest at the rate of 6% per annum from January 1, 2000 until the date of payment of the Award.
2. Respondent is liable and shall pay to Claimants punitive damages in the amount of \$100,000.00, plus simple interest at the rate of 6% per annum from January 1, 2000 until the date of payment of the Award. Punitive damages are awarded pursuant to Florida Statute Section 768.72(3)(c). The Panel finds Respondent liable for failure to supervise the salesperson's activities and to warn the client about the excessive activity. Respondent failed to bring its salesperson, Mitch Varnes, into the hearing to explain the excessive activity and did not present testimony on supervision of the account that was effectively ignored.
3. The Panel defers the requests for costs and attorneys' fees to a court of competent jurisdiction for determination.
4. Any and all claims for relief not specifically addressed herein 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	= \$ 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, Respondent is a party and a member firm.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

February 1 – 2, 2006, adjournment requested by Respondent. The Panel assessed an adjournment fee in the amount of \$1,125.00 to the Respondent.

### **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 or each decision rendered on a discovery-related motion on the papers. 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/session	= \$1,125.00
Pre-hearing conference: October 5, 2004 1 session	
Two (2) Hearing sessions @ \$1,125.00/session	= \$2,250.00
Hearing Date: August 1, 2006 2 sessions	
Total Forum Fees	= \$3,375.00

The Panel assessed the total forum fees in the amount of \$3,375.00 to the Respondent.

### **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 are 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
Total Fees	= \$	300.00
Less payments	= \$	300.00
Balance Due NASD Dispute Resolution	= \$	0.00

**Respondent is solely liable for:**

Member Fees	= \$5,200.00
Adjournment Fee	= \$1,125.00
Forum Fees	= \$3,375.00
<b>Total Fees</b>	<b>= \$9,700.00</b>
<b>Less payments</b>	<b>= \$6,325.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$3,375.00</b>

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

**ARBITRATION PANEL**

<i>W. A. Westlake</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>John M. Tapley, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Darryll R. Bauchert, MBA, CFP</i>	-	<i>Non-Public Arbitrator</i>

### **Concurring Arbitrators' Signatures**

/s/  
W. A. Westlake  
Public Arbitrator, Presiding Chairperson

August 17, 2006  
Signature Date

/s/  
John M. Tapley, Esq.  
Public Arbitrator

August 17, 2006  
Signature Date

/s/  
Darryll R. Bauchert, MBA, CFP  
Non-Public Arbitrator

August 15, 2006  
Signature Date

August 18, 2006  
Date of Service (For NASD Dispute Resolution office use only)

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John M. Tapley, Esq.	-	Public Arbitrator
Darryll R. Bauchert, MBA, CFP	-	Non-Public Arbitrator

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W. A. Westlake  
Public Arbitrator, Presiding Chairperson

  
Signature Date

John M. Tapley, Esq.  
Public Arbitrator

Signature Date



Darryll R. Bauchert, MBA, CFP  
Non-Public Arbitrator

8/15/16  
Signature Date

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

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John M. Tapley, Esq.	-	Public Arbitrator
Darryl R. Bauchert, MBA, CFP	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

W. A. Westlake  
Public Arbitrator, Presiding Chairperson

Signature Date

  
John M. Tapley, Esq.  
Public Arbitrator

  
Signature Date