
**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Neal J. Coleman

Case Number: 04-03537

Name of the Respondent
A.G. Edwards & Sons, Inc.

Hearing Site: St. Louis, Missouri

Nature of the Dispute: Customer vs. Member Firm

REPRESENTATION OF PARTIES

Claimant, Neal J. Coleman, hereinafter referred to as "Claimant": Steven W. Koslovsky, Esq. located in Maryland Heights, Missouri.

Respondent, A.G. Edwards & Sons, Inc. ("A.G. Edwards") hereinafter referred to as "Respondent": Jeffrey W. Coverdell, Esq. of A.G. Edwards & Sons, Inc. located in St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on May 10, 2004. Claimant signed the Uniform Submission Agreement on May 10, 2004.

Statement of Answer filed by A.G. Edwards on July 7, 2004. A. G. Edwards signed the Uniform Submission Agreement on May 24, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, unsuitability, breach of fiduciary duty, misrepresentations and negligence. The causes of action relate to B share growth mutual funds including, Federated Equity Income B; Nations Small Co. Growth Investor B; Nations Capital Growth Investor B; Nations Value Investor B; Nations Marsico Growth & Income B; Nations Marsico Focused Equities B; Putnam Global Growth Class B; and Putnam Research Class B. Claimant asserted that the B share funds recommended by A.G. Edwards were unsuitable to Claimant's investment needs and objectives.

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

1. The Statement of Claim and each count thereof fails to state a claim upon which relief can be granted.
2. To the extent the Statement of Claim alleges a violation of the rules of National

- Association of Securities Dealers, Inc., the New York Stock Exchange, Inc. or any other self-regulatory organization, the Claim fails to state a claim for relief as there is no private cause of action for the violation of such rules or regulations.
3. 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 Claimants' alleged damages were sustained after such time, Claimant is barred from recovering such damages.
 4. Claimant's claims are barred to the extent he authorized the alleged conduct, which occurred in connection with the accounts about which he now complains.
 5. Claimant has waived and/or is estopped from asserting claims against Respondent by virtue of his conduct and dealings with Respondent.
 6. Claimant ratified the alleged conduct about which he complains and, therefore, his claims are barred.
 7. Claimant's claims are barred in full or in part by applicable statutes of limitation and NASD rules.
 8. Claimant is barred from any recovery for the alleged conduct of A.G. Edwards by the doctrine of laches.
 9. Claimant's claims are barred in full or in part by his assumption of the risks involved in investing in securities after he was aware of those risks.
 10. As a result of the Claimant's failure to object or notify A.G. Edwards of the acts and omissions of which Claimant complains after receipt of written confirmations, account statements and other documents evidencing or setting forth transactions in Claimant's accounts, Claimant is barred from recovering from A.G. Edwards under Claimant's Client Agreements with A.G. Edwards and under Section 8-319 of the Uniform Commercial Code as enacted in the State of Illinois.
 11. As a result of Claimant's failure to notify the Respondent of the alleged acts and omissions of which he now complains promptly after receipt of written confirmations, monthly statements and other documents evidencing or setting forth transactions in the accounts, and, in any event, promptly after Claimant discovered or reasonably should have discovered the alleged acts or omissions, the Claimant is barred from recovering under the doctrines of ratification, accounts stated, estoppel, waiver and laches because Respondent relied upon Claimant's silence and inaction.
 12. Claimant has alleged no activity or specific conduct, which resulted in negligence on behalf of A.G. Edwards and any claims based upon the theory of negligence should be dismissed.
 13. The damages which Claimant alleges to have suffered were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in the accounts for which Respondent is neither liable nor responsible.
 14. By failing to exercise the degree of care over his affairs and investments, which ordinarily a prudent investor would exercise, Claimant caused or contributed to cause the alleged damages of which Claimant complains herein and is thus barred by his contributory negligence from recovering such alleged damages from Respondent.
 15. Respondent was not negligent, however, if found to be negligent in any respect, Claimant's negligence was equal to or greater than any negligence on the part of Respondent, and for this reason, Claimant's claims must be dismissed or reduced under the doctrines of contributory negligence, comparative fault or comparative negligence in accordance with applicable law.
 16. Respondent fulfilled each and every duty actually owed to Claimant, and did not

- breach any fiduciary duty to Claimant. Claimant has failed to allege a factual or legal basis for a claim of breach of fiduciary duty, and any such claim must be dismissed.
17. Claimant has failed to allege a factual or legal basis for an award of attorney's fees and to the extent he seeks such relief, the claims must be dismissed.
 18. Claimant has failed to allege a factual or legal basis for an award of punitive damages and to the extent he seeks such relief, the claims must be dismissed.

RELIEF REQUESTED

Claimant requested \$150,000.00 in compensatory damages, \$350,000.00 in punitive damages, interest and attorney's fees.

A.G. Edwards requested that judgment be entered on behalf of Respondent and against Claimant on the claims of Claimant in this arbitration proceeding; and that all costs of this arbitration proceeding, including, but not limited to, forum fees and Respondent's reasonable costs and expenses incurred in defending this matter, be taxed against Claimant; and for such further relief as the Arbitration Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

1. Respondent, A.G. Edwards & Sons, Inc. is solely liable for and shall pay to Claimant, Neal J. Coleman, the sum of \$10,000.00 as compensatory damages.
2. Respondent, A.G. Edwards & Sons, Inc. is solely liable for and shall pay to Claimant, Neal J. Coleman, the sum of \$3,000.00 as attorney's fees. In deciding to award attorney's fees, the Panel considered the pleadings filed by counsel, as well as the arguments presented on behalf of the parties, and determined that authority existed for an award of attorney's fees to the Claimant.
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	= \$ 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, A.G. Edwards & Sons, Inc. is a party and is assessed the following:

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

June 6-7, 2005, adjournment by A.G. Edwards & Sons, Inc.	= \$ 1,125.00 (waived by Panel)
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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 Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: October 5, 2004 1 session	

Four (4) Hearing sessions @ \$1,125.00	= \$ 4,500.00
Hearing Dates: August 3, 2005 2 sessions	
August 4, 2005 2 sessions	

Total Forum Fees	= \$ 5,625.00
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1. The Panel assessed 100% of the total forum fees in the amount of \$5,625.00 solely to A.G. Edwards & Sons, Inc.

FFF SUMMARY

1. Claimant, Neal J. Coleman, is solely liable for:	
Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	= \$ 1,425.00
Refund Due from NASD Dispute Resolution	= \$ 1,125.00
2. Respondent, A.G. Edwards & Sons, Inc. is solely liable for:	
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 5,625.00
Total Fees	= \$10,825.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 5,625.00

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

ARBITRATION PANEL

Richard K. Zerr, Esq.	-	Public Arbitrator, Presiding Chairperson
Robert G. Haddenhorst	-	Public Arbitrator
Matthew P. McCauley	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Richard K. Zerr, Esq.
Richard K. Zerr, Esq.
Public Arbitrator, Presiding Chairperson

8/10/05
Signature Date

Robert G. Haddenhorst
Robert G. Haddenhorst
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

I disagree with the award of attorney's fees.

/s/ Matthew P. McCauley
Matthew P. McCauley
Non-Public Arbitrator

8/10/05
Signature Date

8/10/05
Date of Service (For NASD Dispute Resolution office use only)

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ARBITRATION PANEL

Richard K. Zerr, Esq.
Robert G. Haddenhorst
Matthew P. McCauley

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

Concurring Arbitrators' Signatures


Richard K. Zerr, Esq.
Public Arbitrator, Presiding Chairperson

8-10-05
Signature Date

Robert G. Haddenhorst
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

I disagree with the award of attorney's fees.

Matthew P. McCauley
Non-Public Arbitrator

Signature Date

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Robert G. Haddenhorst	-	Public Arbitrator
Matthew P. McCauley	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Richard K. Zerr, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Robert G. Haddenhorst
Robert G. Haddenhorst
Public Arbitrator

11 Aug 2005
Signature Date

Dissenting Arbitrator's Signature

I disagree with the award of attorney's fees.

Matthew P. McCauley
Non-Public Arbitrator

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Robert G. Haddenhorst
Matthew P. McCauley

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

Concurring Arbitrators' Signatures

Richard K. Zerr, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Robert G. Haddenhorst
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

I disagree with the award of attorney's fees.


Matthew P. McCauley
Non-Public Arbitrator

18 August 05
Signature Date

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