

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

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**In the Matter of the Arbitration Between:**

**Luwain L.S. Ng TTEE Luwain L.S. Ng Charitable Remainder Trust, Luwain L.S. Ng, James W.S. Ng TTEE James W.S. Ng Charitable Remainder Trust, and James W.S. Ng TTEE James W.S. Ng Revocable Trust, Claimants v. A.G. Edwards & Sons, Inc. and David J. Sao Marcos, Respondents**

**Case Number: 04-03601**

**Hearing Site: San Diego, California**

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**Nature of the Dispute:** Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

**For Claimants:**

**Arthur S. Leider  
Investors Arbitration Specialists, Inc.  
San Diego, California**

**For Respondent A.G. Edwards & Sons, Inc.:**

**William S. Port, Esq.  
A.G. Edwards & Sons, Inc.  
St. Louis, Missouri**

**For Respondent David J. Sao Marcos:**

**Jeffrey P. Lendrum, Esq.  
Lendrum Law Firm  
La Jolla, California**

**CASE INFORMATION**

**Statement of Claim filed on or about: May 17, 2004**

**Amended Statement of Claim filed: February 3, 2005**

**Claimants' Joint Uniform Submission Agreements signed: March 30, 2003 and March 25, 2004**

**Statement of Answer to Statement of Claim filed by Respondent A.G. Edwards & Sons, Inc.:  
June 25, 2004**

**Statement of Answer to Statement of Claim filed by Respondent David J. Sao Marcos:  
July 7, 2004**

Respondent A.G. Edwards & Sons, Inc.'s Uniform Submission Agreement signed:  
June 25, 2004

Respondent David J. Sao Marcos' Uniform Submission Agreement signed: July 7, 2004

### **CASE SUMMARY**

Claimants alleged breach of fiduciary duty, negligence, constructive fraud, violation of federal and state securities laws and NASD Rules of Fair Practice, and churning or excessive trading. The dispute involved unspecified securities.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statements of Claim and asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$680,000.00, punitive or exemplary damages in the amount of \$300,000.00, pre-award and post-award interest, expert witness fees, and costs, including representation fees.

Respondents requested dismissal of the Claimants' Statements of Claim in their entirety, and costs, including attorney's fees. Additionally, Respondent David J. Sao Marcos requested that all references to this matter be expunged from his records.

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

On March 25, 2004, Claimants and Claimants' representative signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On February 3, 2005, Claimants filed a Motion to Take Leave to Amend and First Amended Statement of Claim. On February 17, 2005, Respondent David J. Sao Marcos filed a response to Claimants' Motion to Take Leave to Amend and First Amended Statement of Claim. On February 22, 2005, Respondent A.G. Edwards & Sons, Inc. filed a response to Claimants' Motion to Take Leave to Amend and First Amended Statement of Claim. After due deliberation, on March 9, 2005, the Panel granted Claimants' Motion to Take Leave to Amend the Statement of Claim.

At the evidentiary hearing, Claimants requested that an internal document/memo (Document 000048-000057) be admitted into evidence. Respondents objected claiming attorney-client privilege. Claimant argued that privilege was broken. After due deliberation, the Panel allowed the document to be admitted into evidence.

At the conclusion of the evidentiary hearing prior to closing arguments, Claimants dismissed Respondent David J. Sao Marcos.

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent A.G. Edwards & Sons, Inc. is liable to and shall pay Claimants James W.S. Ng TTEE James W.S. Ng Charitable Remainder Trust and James W.S. Ng TTEE James W.S. Ng Revocable Trust \$100,756.00 in compensatory damages.
- 2) Claimants Luwain L.S. Ng TTEE Luwain L.S. Ng Charitable Remainder Trust and Luwain L.S. Ng's claims are denied in their entirety.
- 3) Claimants' request for punitive and exemplary damages is denied.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the *Code of Arbitration Procedure* ("Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 375.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm A.G. Edwards & Sons, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 4,000.00
<b>Total Member Fees</b>	<b>= \$ 7,000.00</b>

#### **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 conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference:      October 13, 2004      1 session	

Seven (7) Hearing sessions @ \$1,200.00/session	= \$ 8,400.00
Hearings:      August 9, 2005      2 sessions	
August 10, 2005      2 sessions	
August 11, 2005      2 sessions	
August 12, 2005      1 session	

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<b>Total Forum Fees</b>	<b>= \$ 9,600.00</b>
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1. The Panel assessed \$4,800.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$4,800.00 of the forum fees to Respondent A.G. Edwards & Sons, Inc.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimants requested copies of tapes  
13 tapes @ \$15.00/tape: =\$ 195.00

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 4,800.00
<u>Administrative Costs</u>	<u>= \$ 195.00</u>
Total Fees	= \$ 5,370.00
<u>Less payments</u>	<u>= \$(1,575.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,795.00</b>

2. Respondent A.G. Edwards & Sons, Inc. is charged with the following fees and costs:

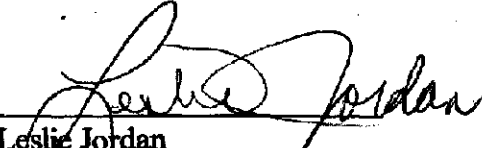
Member Fees	= \$ 7,000.00
Forum Fees	= \$ 4,800.00
Total Fees	= \$11,800.00
<u>Less payments</u>	<u>= \$(7,000.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,800.00</b>

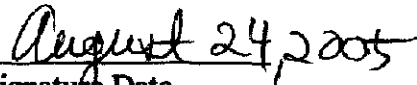
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Leslie Jordan	-	Public Arbitrator, Presiding Chair
Doris V. Knotter	-	Public Arbitrator
Roger T. Verhage	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Leslie Jordan  
Chair, Public Arbitrator

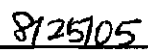
  
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Signature Date

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Doris V. Knotter  
Public Arbitrator

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Signature Date

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Roger T. Verhage  
Non-Public Arbitrator

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Signature Date

  
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Date of Service

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Doris V. Knotter	-	Public Arbitrator
Roger T. Verhage	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Leslie Jordan  
Chair, Public Arbitrator

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Signature Date

  
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Doris V. Knotter  
Public Arbitrator

8-24-05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Roger T. Verhage  
Non-Public Arbitrator

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

8/25/05  
\_\_\_\_\_  
Date of Service

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Leslie Jordan  
Chair, Public Arbitrator

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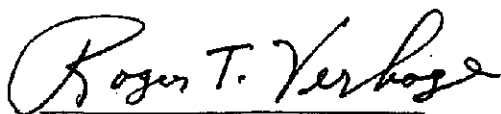
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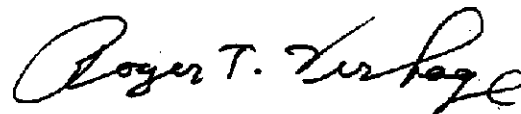
Doris V. Knotter  
Public Arbitrator

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Signature Date



Roger T. Verhage  
Non-Public Arbitrator



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Signature Date

8/24/05

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8/25/05

Date of Service