
**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Connie S. Osborne

Case Number: 04-04115

Name of the Respondents
A.G. Edwards & Sons, Inc. and
Polly Sue Jones

Hearing Site: St. Louis, Missouri

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

REPRESENTATION OF PARTIES

Claimant, Connie S. Osborne, hereinafter referred to as "Claimant": Robert J. Benbenek, Esq. of Devoto & Benbenek, LLC, located in St. Louis, Missouri.

Respondents, A.G. Edwards & Sons, Inc. ("Edwards") and Polly S. Jones ("Jones"), hereinafter collectively referred to as "Respondents": Matthew Salamon, Esq. of A.G. Edwards & Sons, Inc. located in St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about June 4, 2004. Claimant signed the Uniform Submission Agreement on May 27, 2004.

Statement of Answer filed by Respondents, A.G. Edwards & Sons, Inc. and Polly S. Jones, on July 30, 2004. Respondent Edwards signed the Uniform Submission Agreement on June 30, 2004. Respondent Jones signed the Uniform Submission Agreement on July 22, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, negligence, failure to supervise, breach of fiduciary duty, misrepresentations, omission of facts and suitability. The causes of action relate to SBC stock. Claimant asserted that the investments made in Claimant's accounts, mostly of technology and aggressive sectors, were speculative and unsuitable to Claimant's objective for capital preservation and conservative growth.

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

1. Claimant failed to act promptly and with due diligence to mitigate any alleged damages after Claimant knew or should have known of the alleged facts and circumstances of which Claimant complains. In addition, the fact that the client, Mr. Osborne, Claimant's spouse, did not complain during the time the investments were

held at Edwards, suggests that the account holder fully understood and accepted the implications of investing under market risk, and made no effort to mitigate the decline in values as he fully intended to hold the investments, understanding them to be suitable.

2. Claimant waived and/or is estopped from asserting claims against Respondents by virtue of the fact that she had no assets held in either account at Edwards. As a result of the fact that Claimant's spouse failed to notify Respondents promptly after receipt of written confirmations, monthly statements and other documents evidencing the account status or any potentially non-suitable or unauthorized transaction or position acquired, Claimant is barred from recovering from Respondents under the doctrines of account stated, estoppel, waiver of laches, because Respondents relied upon the Claimant or her predecessor in interest to reasonably monitor the accounts, and relief upon the silence and acquiescence of Mr. Osborne and Claimant in response to continued notice of trades, transactions or accounts status.
3. Claimant ratified the alleged conduct about which she now complains.
4. By failing to exercise that degree of care over investments which an ordinarily prudent investor would exercise, Claimant or Claimant's predecessor in interest caused or contributed to cause the alleged damage of which complains herein, and Claimant should be barred from recovering any alleged damages based on her own contributory negligence or comparative faults, or that of her predecessor in interest.
5. Claimant and her spouse were aware from the outset of the potential risks of loss associated with investing in securities, and voluntarily and knowingly assumed such risks. The Claimant's knowing and voluntary assumption of such risks is the sole and proximate cause of any alleged damage or loss. Claimant cannot be entitled to recover for any alleged damages resulting from the disclosed and known risks which were voluntarily assumed by Claimant or her predecessor in interest.
6. Damages or losses allegedly by Claimant were caused, if at all, by unforeseeable market factors and other conditions including national security matters, affecting the value of securities in Claimant's account for which Respondents are not liable or responsible.
7. The Statement of Claim and all allegations set forth in same fail to state a claim against Respondents upon which relief can be granted.
8. Claimant, by and through her predecessor in interest, failed to act promptly and act with due diligence to mitigate any alleged damages or losses after he knew or should have known of the alleged acts or omissions of which Claimant now complains. As a result of this failure to object or notify Respondents of the acts or omissions of which Claimant complains within ten (10) days of the receipt of written confirmations, monthly statements and any other documents evidencing or setting forth transactions or an account or feature, Claimant is barred from recovering from Respondents under Section 8-319 of the Uniform Commercial Code as enacted in the states of Missouri and Illinois. To the extent Claimant alleges damages were sustained after that time, Claimant is barred from recovering such damages.

RELIEF REQUESTED

Claimant requested \$450,000.00 in compensatory damages, punitive damages in the amount of \$900,000.00, interest, cost, attorney's fees and any further relief as the Panel deems just and proper.

Respondents, Edwards and Jones, requested dismissal of the Statement of Claim, costs and for further relief deemed 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. Respondents, A.G. Edwards & Sons, Inc. and Polly S. Jones, are jointly and severally liable for and shall pay to Claimant, Connie S. Osborne, the sum of \$85,692.00 as compensatory damages, plus interest at the rate of 10.00% per annum to accrue from thirty (30) days of the date the Award until Award is paid in full.
2. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
3. 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 = \$ 500.00

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 member firm and is assessed the following fees:

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

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:

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: December 15, 2004 1 session	

Eight (8) Hearing sessions @ \$1,200.00 = \$ 9,600.00
Hearing Dates:

August 16, 2005 2 sessions
August 17, 2005 2 sessions
August 18, 2005 2 sessions
August 19, 2005 2 sessions

Total Forum Fees = \$10,800.00

1. The Panel assessed 50% of the total forum fees in the amount of \$5,400.00 solely to Claimant, Connie S. Osborne.
2. The Panel assessed 50% of the total forum fees in the amount of \$5,400.00 jointly and severally to Respondents, A.G. Edwards & Sons, Inc. and Polly S. Jones.

FFF SUMMARY

1. Claimant, Connie S. Osborne, is solely liable for:

Initial Filing Fee = \$ 500.00
Forum Fees = \$ 5,400.00
Total Fees = \$ 5,900.00
Less payments = \$ 1,700.00
Balance Due NASD Dispute Resolution = \$ 4,200.00

2. Respondent, A.G. Edwards & Sons, Inc. is solely liable for:

Member Fees = \$ 8,550.00
Less payments = \$ 8,550.00
Balance Due NASD Dispute Resolution = \$ 0.00

3. Respondents, A.G. Edwards & Sons, Inc. and Polly S. Jones, are jointly and severally liable for:

Forum Fees = \$ 5,400.00
Less payments = \$ 0.00
Balance Due NASD Dispute Resolution = \$ 5,400.00

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

ARBITRATION PANEL

Keith E. Mattern, Esq. - Public Arbitrator, Presiding Chairperson
Thomas A. Cipolla, Esq. - Public Arbitrator
Julie L. Dewitt - Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Keith E. Mattern, Esq.
Keith E. Mattern, Esq.
Public Arbitrator, Presiding Chairperson

8/22/05
Signature Date

/s/ Thomas A. Cipolla, Esq.
Thomas A. Cipolla, Esq.
Public Arbitrator

8/22/05
Signature Date

/s/ Julie L. Dewitt
Julie L. Dewitt
Non-Public Arbitrator

8/22/05
Signature Date

8/24/05
Date of Service (For NASD Dispute Resolution office use only)

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2. The Panel assessed 50% of the total forum fees in the amount of \$5,400.00 jointly and severally to Respondents, A.G. Edwards & Sons, Inc. and Polly S. Jones.

FEE SUMMARY

1. Claimant, Connie S. Osborne, is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 5,400.00
<u>Total Fees</u>	<u>= \$ 5,900.00</u>
<u>Less payments</u>	<u>= \$ 1,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,200.00
2. Respondent, A.G. Edwards & Sons, Inc. is solely liable for:

Member Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondents, A.G. Edwards & Sons, Inc. and Polly S. Jones, are jointly and severally liable for:

Forum Fees	= \$ 5,400.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,400.00

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

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Thomas A. Cipolla, Esq.	-	Public Arbitrator
Julie L. Dewitt	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


 Keith E. Mattern, Esq.
 Public Arbitrator, Presiding Chairperson

8-22-05
 Signature Date

Thomas A. Cipolla, Esq.
 Public Arbitrator

 Signature Date

Julie L. Dewitt
 Non-Public Arbitrator

 Signature Date

NASD Dispute Resolution

Arbitration No. 04-04115

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Thomas A. Cipolla, Esq.

Public Arbitrator

8/22/05

Signature Date

Julie L. Dewitt

Non-Public Arbitrator

Signature Date

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

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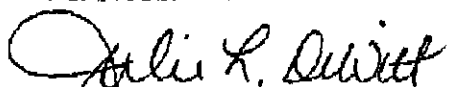
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Arbitration No. 04-04115
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Thomas A. Cipolla, Esq.
Public Arbitrator

Signature Date



Julie L. Dewitt
Non-Public Arbitrator

8/22/05
Signature Date

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