

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Dennis F. Hook, Claimant v. A.G. Edwards & Sons, Inc., Respondent

Case Number: 04-04790

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

John F. Kunath, Jr., Esq.
Attorney at Law
Irvine, California

For Respondent:

Jeffrey W. Coverdell, Esq.
A.G. Edwards & Sons, Inc.
St. Louis, Missouri

CASE INFORMATION

Statement of Claim filed: July 2, 2004

Claimant's Uniform Submission Agreement signed: June 29, 2004

Statement of Answer filed by Respondent: September 5, 2004

Respondent's Uniform Submission Agreement signed: August 9, 2004

CASE SUMMARY

Claimant alleged breach of contract and unfair business practices involving transactions in unspecified securities.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$1,300,000.00 in compensatory damages, a permanent injunction prohibiting and enjoining Respondent from engaging in the conduct alleged, disgorgement of profits, pre- and post-judgment interest, and costs, including attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On October 28, 2004, Claimant and Claimant's counsel 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 Claimant 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, 2006, Respondent filed a motion to strike or dismiss various causes of action raised in Claimant's pleadings and/or briefs. On February 6, 2006, Claimant filed an opposition to the motion. After due deliberation, the Panel denied Respondent's motion.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

FINDINGS AND CONCLUSIONS

The award in this matter is substantially less than that prayed for in the Statement of Claim because, after considering all of the pleadings and submissions and all of the evidence adduced at the hearing, the Panel concludes that the conduct of Respondent A.G. Edwards & Inc., including, but not limited to, its failure to fully advise Claimant Dennis F. Hook of the full range of options available to him in connection with the freeze, contributed relatively minimally to the losses incurred by Claimant, whereas the conduct of Mr. Hook, including, but not limited to, his failure to mitigate damages, contributed relatively substantially to the losses.

AWARD

After considering the pleadings, testimony, evidence presented at the hearing, and post-hearing submissions, 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 Claimant Dennis F. Hook the sum of \$260,856.83 in compensatory damages.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the *NASD 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	= \$ 500.00
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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	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00
Total Member Fees	= \$ 8,550.00

Adjournment Fees

The following adjournment fees are assessed:

October 18-21, 2005 adjournment requested by Respondent	= \$ 1,200.00
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The Panel waived the adjournment fees.

Three-Day Cancellation Fees

Three-day cancellation fees apply when a hearing on the merits is postponed or settled within three business days before the start of the first scheduled hearing session. The following three-day cancellation fees are assessed:

Cancellation of October 18-21, 2005 hearings dates = \$ 300.00

The Panel waived the three-day cancellation fees.

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: October 7, 2005 1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 2,400.00
Pre-hearing conferences: January 31, 2005 1 session
October 19, 2005 1 session

Seven (7) Hearing sessions @ \$1,200.00/session = \$ 8,400.00
Hearings: February 7, 2006 2 sessions
February 8, 2006 2 sessions
February 9, 2006 3 sessions

Total Forum Fees = \$11,250.00

1. The Panel assessed \$5,025.00 of the forum fees to Claimant Dennis F. Hook.
2. The Panel assessed \$5,025.00 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.

Respondent requested photocopy service of 24 copies @ \$.50 per page = \$ 12.00
Respondent requested one (1) audiotape @ \$15.00 per tape = \$ 15.00

Total Administrative Costs = \$ 27.00

Fee Summary

1. Claimant Dennis F. Hook is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 5,625.00
Total Fees	= \$ 6,125.00
Less payments	= \$ (1,700.00)
Balance Due NASD Dispute Resolution	= \$ 4,425.00

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

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 5,625.00
Administrative Costs	= \$ 27.00
Total Fees	= \$14,202.00
Less payments	= \$ (9,300.00)
Balance Due NASD Dispute Resolution	= \$ 4,902.00

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

Joseph Winter	-	Public Arbitrator, Presiding Chair
Mark S. Priver	-	Public Arbitrator
Walter R. Whitman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Joseph Winter
Chair, Public Arbitrator

March 4, 2006

Signature Date

Walter R. Whitman
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Dissenting from the majority of the Award, Arbitrator Mark Priver would dismiss Claimant's claim for the reason that even assuming the wrongfulness of Respondent's failure to fully advise Claimant after May 2000 about his option to liquidate the securities in his accounts and hold cash, the record is unpersuasive that Claimant would have taken advantage of that option. As such, I would find that Respondent's conduct was not a substantial factor in causing Claimant's alleged loss(es).

Mark S. Priver
Public Arbitrator

Signature Date

03/06/06

Date of Service

ARBITRATION PANEL

Joseph Winter	-	Public Arbitrator, Presiding Chair
Mark S. Priver	-	Public Arbitrator
Walter R. Whitman	-	Non-Public Arbitrator

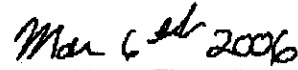
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Public Arbitrator

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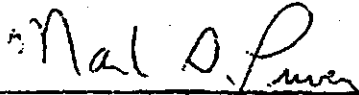
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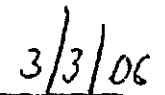
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Mark S. Priver
Public Arbitrator



Signature Date



Date of Service