

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-06092

Donald Allen

Name of the Respondent

Hearing Site: Charlotte, North Carolina

A.G. Edwards & Sons, Inc.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

Claimant, Donald Allen, hereinafter referred to as "Claimant", was represented by Julie H. Fosbinder, Esq., and Joshua R. Van Kampen, Esq., Fosbinder Law Offices, Charlotte, NC.

Respondent, A.G. Edwards & Sons, Inc., hereinafter referred to as "Respondent", was represented by Nuviah Shirazi, Esq., and Nancy Tayborn, Esq., A.G. Edwards & Sons, Inc., St. Louis, MO and Ingrid Blackwelder Erwin, Esq., Jackson Lewis LLP, Greenville, SC.

CASE INFORMATION

Statement of Claim filed on August 27, 2004.

Claimant signed the Uniform Submission Agreement on August 24, 2004.

Statement of Answer filed by Respondent on June 5, 2005.

Respondent did not sign the Uniform Submission Agreement.

Respondent filed a Motion to Stay Proceedings on October 6, 2004.

Claimant filed a Response to Respondent's Motion to Stay Proceedings on December 14, 2004.

Respondent filed a Motion for Leave to File an Answer on July 1, 2005.

Claimant filed a Response to Respondent's Motion to File Answer and Motion to Preclude Arguments and Defenses on July 21, 2005.

Respondent filed a Response to Claimant's Response to Respondent's Motion for Leave to File an Answer on August 4, 2005.

Claimant filed a Reply Memorandum in Support of Motion to Preclude Arguments and Defenses on August 9, 2005.

CASE SUMMARY

Claimant asserted the following causes of action, among others: discrimination under N.C.G.S. 143-422.1 et. seq., violation of the Americans with Disabilities Act ("ADA"), wrongful demotion and constructive discharge in violation of public policy, negligent infliction of emotional distress, violation of the Family Medical Leave Act ("FMLA"), breach of contract, and tortious interference with business relations. The causes of action relate to Claimant's employment with and termination from Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted, failure to satisfy conditions precedent to filing the claim, statute of limitations, no viable claims, failure to mitigate, Claimant does not have a "disability" within meaning of the ADA, 42 U.S.C. § 12102 (2), Claimant is not a "qualified individual with a disability" under the ADA, 42 U.S.C. § 12102 (8), Claimant was not "otherwise qualified" under the ADA, 42 U.S.C. § 12112, Claimant could not be reasonably accommodated under ADA, 42 U.S.C. § 12112, any accommodations by Respondent beyond that which it undertook would have imposed an undue hardship on Respondent, Claimant did not have a serious health condition under FMLA, and Claimant did not give notice for leave.

RELIEF REQUESTED

Claimant requested compensatory damages of approximately \$10,000,000.00, punitive damages, and attorneys' fees and costs in the amount of \$475,454.76.

Respondent in its Statement of Answer requested that all claims be dismissed with prejudice, an award of attorneys' fees and costs, and such other and further relief as may be just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On August 18, 2005, the Panel granted Respondent's Motion for Leave to File Answer and denied Claimant's Motion to Preclude Arguments and Defenses.

On January 18, 2006, following completion of Claimant's case in chief, the Panel denied Respondent's Motion to Dismiss Claims.

On February 8, 2006, the Panel denied Claimant's Motion to Strike Respondent's Case.

On February 8, 2006, Claimant made a Motion to Sanction Respondent for Discovery Abuse. The Panel held the decision on that motion in abeyance pending completion of the hearing and has now assessed discovery sanctions against Respondent in the amount of \$ 7,500.00.

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

1. Respondent is liable to and shall pay to Claimant compensatory damages in the amount of \$ 340,000.00 and liquidated damages in the amount of \$ 340,000.00, plus simple interest on the total damages of \$680,000 at the rate of 8.0% per annum from October 25, 2001, until the date of payment in full;
2. Respondent is liable to and shall pay to Claimant costs and attorneys' fees in the amount of \$310,000, pursuant to ADA and FMLA;
3. Respondent is liable to and shall pay to Claimant \$7,500.00 in sanctions for discovery abuse; and
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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 = \$ 600.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent is a party.

Member surcharge = \$ 3,350.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 5,500.00

Total Member Fees = \$ 9,600.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

November 29-December 2, 2005, adjournment by Respondent = Waived

March 29-31, 2006, adjournment by Respondent = Waived

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:

November 29-December 2, 2005, adjournment by Respondent = Waived

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel @ \$ 1,200.00 = \$ 3,600.00

Pre-hearing conferences: March 16, 2005 1 session
November 29, 2005 1 session
March 16, 2006 1 session

Thirty-three (33) Hearing sessions @ \$1,200.00 = \$39,600.00

Hearing Dates: January 9, 2006 2 sessions
January 10, 2006 2 sessions

January 11, 2006	2 sessions
January 12, 2006	3 sessions
January 13, 2006	1 session
January 16, 2006	2 sessions
January 17, 2006	2 sessions
January 18, 2006	3 sessions
January 19, 2006	2 sessions
January 20, 2006	2 sessions
February 6, 2006	3 sessions
February 7, 2006	1 session
February 8, 2006	3 sessions
May 2, 2006	2 sessions
May 3, 2006	2 sessions
May 4, 2006	1 session

Total Forum Fees	= \$43,200.00
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1. The Panel has assessed \$ 21,600.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 21,600.00 of the forum fees to Respondent.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$21,600.00
Total Fees	= \$22,200.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$20,400.00

2. Respondent is assessed and shall pay the following fees:

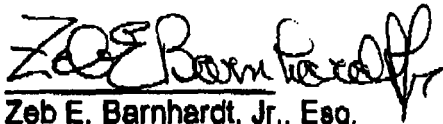
Member Fees	= \$ 9,600.00
Forum Fees	= \$21,600.00
Total Fees	= \$31,200.00
Less payments	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$21,600.00

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

ARBITRATION PANEL

Zeb E. Barnhardt, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
William H. Malloy, Jr., Esq.	-	Public Arbitrator, Panelist
Kenneth Hoffner	-	Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Zeb E. Barnhardt, Jr., Esq.
Public Arbitrator, Presiding Chairperson

June 23, 2006
Signature Date

William H. Malloy, Jr., Esq.
Public Arbitrator, Panelist

Signature Date

Kenneth Hoffner
Public Arbitrator, Panelist


Signature Date

July 26, 2006
Date of Service (For NASD Dispute Resolution office use only)

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Signature

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Kenneth Hoffner
Public Arbitrator, Panelist

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