

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

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

**Mary Jean Simpkins, individually, as trustee of the Mary Jean Simpkins Trust DTD 8/12/99, and  
as custodian for Bradley Cameron Crowe and Ciera Anabelle Crowe, Claimants v. A.G.  
Edwards & Sons, Inc. and Michael L. Tahmoush, Respondents**

**Case Number: 04-06107**

**Hearing Site: Los Angeles, California**

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

**REPRESENTATION OF PARTIES**

**For Claimants:**

**Paul W. Thomas, Esq.  
Neda Ataie, Esq.  
Law Offices of Paul W. Thomas  
& Assoc.  
Carlsbad, California**

**For Respondents:**

**Matthew Salomon, Esq.  
A.G. Edwards & Sons, Inc.  
St. Louis, Missouri**

**CASE INFORMATION**

**Statement of Claim filed: August 26, 2004**

**Claimants' Joint Uniform Submission Agreement signed: November 7, 2004**

**Joint Statement of Answer filed by Respondents: November 9, 2004**

**Respondent A.G. Edwards & Sons, Inc.'s Uniform Submission Agreement signed:  
September 30, 2004**

**Respondent Michael L. Tahmoush's Uniform Submission Agreement signed: October 5, 2004**

### **CASE SUMMARY**

Claimants alleged breach of fiduciary duty, unsuitability, unauthorized trading, fraud, negligence, violation of NASD rules, and failure to supervise. Claimants' alleged Respondents' improperly allocated Claimants' assets by investing up to 100% of certain accounts in equities including, but not limited to, America Online, Amgen, Applied Micro Circuits, Cisco, Citigroup, EMC, Guident, Intel, MCI Worldcom, Medtronic, Nokia, Nortel Networks, Oracle, Qwest Communications, Sun Microsystems, Texas Instruments, Verisigns, Vodaphone Wireless, Yahoo,

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

### **RELIEF REQUESTED**

Claimants requested \$600,000.00 in compensatory damages, unspecified lost opportunity damages, unspecified punitive damages, pre-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and costs.

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

On September 28, 2004, Claimants and Claimants' 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 waivers 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.

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) Respondents are jointly and severally liable to and shall pay Claimants the sum of \$92,684.00 in compensatory damages.
- 2) Respondents are jointly and severally liable to and shall reimburse Claimants the sum of \$375.00 in filing fees.
- 3) Except for paragraph 2, the parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the 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
Hearing Process Fee	= \$4,000.00
<b>Total Member Fees</b>	<b>= \$7,000.00</b>

#### **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 the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: February 7, 2005 1 session	

Seven (7) Hearing sessions @ \$1,200.00/session	= \$8,400.00
Hearings: September 21, 2005 2 sessions	
September 22, 2005 2 sessions	
September 23, 2005 3 sessions	

<b>Total Forum Fees</b>	<b>= \$9,600.00</b>
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The Panel assessed the entire balance of the forum fees, in the amount of \$9,600.00, jointly and severally to Respondents.

**Fee Summary**

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

Initial Filing Fee	= \$ 375.00
<u>Less payments</u>	<u>= \$(1,575.00)</u>
<b>Refund Due from NASD Dispute Resolution</b>	<b>= \$(1,200.00)</b>
  
2. Respondent A.G. Edwards & Sons, Inc. is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
<u>Less payments</u>	<u>= \$(7,000.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
  
3. Respondents A.G. Edwards & Sons, Inc. and Michael L. Tahmouh are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	<u>= \$ 9,600.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 9,600.00</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

<i>Barbara M. Zak</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Ernest S. Gould, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Craig Robert Watanabe</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

*Barbara m. Zak*  
Barbara M. Zak  
Chair, Public Arbitrator

10-7-05  
Signature Date

Craig Robert Watanabe  
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Ernest S. Gould, Esq.  
Public Arbitrator

Signature Date

October 7, 2005  
Date of Service

**ARBITRATION PANEL**

<i>Barbara M. Zak</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Ernest S. Gould, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Craig Robert Watanabe</i>	-	<i>Non-Public Arbitrator</i>

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Signature Date

*Craig Robert Watanabe*  
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Craig Robert Watanabe  
Non-Public Arbitrator

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Signature Date

**Dissenting Arbitrator's Signature**

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Ernest S. Gould, Esq.  
Public Arbitrator

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Signature Date

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*Ernest S. Gould, Esq.*  
*Craig Robert Watanabe*

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*Public Arbitrator, Presiding Chair*  
*Public Arbitrator*  
*Non-Public Arbitrator*

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