

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

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In the Matter of the Arbitration Between:

Shizuka Oda, Claimant v. Jeffery E. Fong, Jay C. Fong and A.G. Edwards & Sons, Inc.,  
Respondents

Case Number: 04-07929

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

Jonathan Boonin  
Warren & Boonin LLP  
Boulder, Colorado

For Respondents:

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

**CASE INFORMATION**

Statement of Claim filed: November 17, 2004

Claimant's Arbitration Brief filed: January 4, 2006

Claimant's Uniform Submission Agreement signed: November 16, 2004

Joint Statement of Answer filed by Respondents Jeffery E. Fong, Jay C. Fong and A.G. Edwards & Sons, Inc. ("Edwards"): January 5, 2005

Respondent Jeffery E. Fong's Uniform Submission Agreement signed: January 3, 2005

Respondent Jay C. Fong's Uniform Submission Agreement signed: December 29, 2004

Respondent Edwards' Uniform Submission Agreement signed: January 5, 2005

**CASE SUMMARY**

Claimant alleged that this case involves a betrayal of a financially unsophisticated client by two investment advisors and their firm. Claimant further alleged that Respondents – through a series

of egregiously unsuitable investment recommendations and reckless margin trading – caused Ms. Oda to lose in less than one year more than \$1,388,000.00 while Respondents made more than \$68,000.00 in margin interest and commissions. Claimant also alleged the following claims with respect to investments in various securities, including but not limited to, investments in Xilinx stock: 1) Unsuitability; 2) Breach of Fiduciary Duty; 3) Unjust Enrichment; 4) Churning; 5) Unauthorized Trading; 6) Failure to Supervise; 7) Respondeat Superior; 8) Controlling Person Liability; 9) Extreme and Outrageous Conduct; and 10) Punitive Damages.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested:

1. The lost value of her accounts, in an amount to be proven at the hearing, but believed to be in excess of \$1,500,000.00;
2. Reimbursement of the commissions, management fees, and margin interest, unjustly charged by Respondents, in an amount to be proven at the hearing, but believed to be in excess of \$66,000.00;
3. Compensation for the margin interest and related charges Ms. Oda incurred at Charles Schwab & Co., Inc. resulting from the margin debt created by Respondents;
4. Compensation for Ms. Oda's mental anguish and severe emotional distress, in an amount to be proven at the hearing;
5. An award of her costs and fees, including a reasonable attorney fee;
6. A substantial award of punitive damages, in an amount to be proven at the hearing; and
7. All other relief that the arbitrators deem appropriate and just.

Respondents requested:

1. Dismissal of Claimant's Statement of Claim in its entirety;
2. Costs, including reasonable attorney's fees; and
3. Such other and further relief as the Panel deems just and proper.

Respondents also requested that the Panel recommend that all reference to this matter be expunged from Jeffery E. Fong and Jay C. Fong's registration records maintained by the NASD Central Registration Depository ("CRD").

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

On December 4, 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.

During the hearing, Claimant dismissed the claim for churning.

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. All claims by Claimant, including the claims for punitive damages, are dismissed.
2. Respondents Jeffery E. Fong and Jay C. Fong's request that the Panel recommend that all reference to this matter be expunged from their CRD records is denied.
3. Each party shall bear its own costs, including attorney's fees.
4. All other relief 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	= \$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, Edwards is a party and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

**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/Panel. The following fees are assessed:

(6) Hearing sessions @ \$1,200.00/session		= \$7,200.00
Hearing Dates:	January 24, 2006	2 sessions
	January 25, 2006	2 sessions
	January 26, 2006	2 sessions

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<b>Total Forum Fees</b>	<b>= \$7,200.00</b>
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The Panel assessed \$3,600.00 of the forum fees to Claimant.

The Panel assessed \$3,600.00 of the forum fees jointly and severally to Respondents Jeffery E. Fong, Jay C. Fong and Edwards.

**Fee Summary**

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

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 3,600.00</u>
Total Fees	= \$ 4,100.00
<u>Less Payments</u>	<u>= \$( 1,700.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,400.00</b>

2. Respondent Edwards is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Less Payments</u>	<u>= \$( 8,550.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Jeffery E. Fong, Jay C. Fong and Edwards are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 3,600.00
<u>Less Payments</u>	<u>= \$( 0.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,600.00</b>

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

**ARBITRATION PANEL**

Sterling N. Frost	•	Public Arbitrator, Presiding Chair
Dean J. Dietrich, Esq.	•	Public Arbitrator
Mary Kay Higgins Crockett	•	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Sterling N. Frost  
Chair, Public Arbitrator

2/08/06  
Signature Date

Mary Kay Higgins Crockett  
Non-Public Arbitrator

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

**Dissenting Arbitrator's Signature**

Dean J. Dietrich, Esq.  
Public Arbitrator

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

2/10/06  
Date of Service

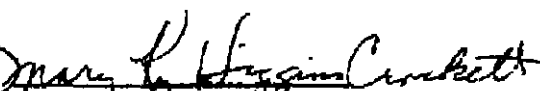
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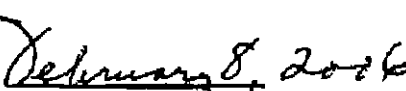
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Public Arbitrator

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