

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Mary Davis and Donna Jean Prior

Case Number: 04-08817

Name of the Respondent

A.G. Edwards & Sons, Inc.

Hearing Site: St. Louis, Missouri

NATURE OF THE DISPUTE

Public Customers v. Member Firm

REPRESENTATION OF PARTIES

Claimants Mary Davis ("Davis") and Donna Jean Prior ("Prior"), hereinafter collectively referred to as "Claimants": Donald J. Mehan, Esq. of the firm of Moline, Shostak & Mehan, LLC, located in St. Louis, Missouri.

Respondent A.G. Edwards & Sons, Inc., hereinafter referred to as "Respondent": Brent J. Burtin, Esq., of A.G. Edwards & Sons, Inc., St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed: December 31, 2004.

Claimants signed the Uniform Submission Agreement: November 29, 2004.

Statement of Answer filed by Respondent on: February 22, 2005.

Respondent signed the Uniform Submission Agreement: April 22, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: negligence; recklessness; breach of fiduciary duty; violation of Article III, Section 2 of the NASD Rules of Fair Practice; and violation of Section 30-51.170 of the Missouri Uniform Securities Act, specifically Section 30-51.170(E) which prohibits recommending unsuitable securities for accounts. These causes of action related from the removal of Claimants' assets from the American Funds Washington Mutual Investors Fund, a suitable investment given Claimants' ages and investment needs, and then changing the investment needs to "Growth Conservative" and secondarily, "Growth Aggressive." Claimants' assets were then invested into three separate discretionary managed accounts that generated higher fees and selected equities which were unsuitable and overly aggressive for someone in Claimants' situation.

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

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. Claimants are barred from recovery under the doctrines of ratification, estoppel, waiver and laches;
3. Claimants' knowing and voluntary assumption of the risk of loss associated with investing in securities was the sole and proximate cause of any alleged damages;
4. Claimants ratified the alleged conduct about which they complain;
5. There is no private right of action for an alleged violation of industry rules and regulations;
6. Claimants are barred from recovery under the terms of their customer agreement and under Section 8-319 of the Uniform Commercial Code as enacted in the State of Missouri because of their failure to notify Respondent of any acts or omissions within ten days receipt of any document evidencing the transactions in Claimants' accounts;
7. Claimants failed to assert any statutory or legal basis for an award of attorneys' fees or punitive damages, and absent such a provision or basis, the arbitrators cannot award such damages;
8. Respondent did not engage in excessive trading in Claimants' accounts and did not recommend unsuitable securities in light of Claimants' investment objectives;
9. Claimants failed to act promptly and with due diligence to mitigate their damages;
10. Claimants failed to exercise a degree of care over their investments that an ordinarily prudent investor would exercise and any award of damages must be reduced by the percentage of liability assessed to Claimants;
11. The damages, if any, suffered by Claimants were the result of unforeseen market factors and conditions for which Respondent is not liable or responsible;
12. All claims for relief in the Statement of Claim are barred by the applicable statutes of limitations;
13. Claimants have alleged no activity or specific conduct which resulted in a breach of conduct by Respondent, and any such claims based upon a breach of contract should be dismissed;
14. Claimants have alleged no activity or specific conduct which resulted in a breach of fiduciary duty, and therefore, any such claims must be dismissed; and,
15. Claimants have failed to allege or plead any facts that would be a violation of the Missouri Security Act and all such claims should be summarily dismissed.

RELIEF REQUESTED

Claimants Davis and Prior requested:

Compensatory Damages
Punitive Damages

Interest

In excess of \$420,000.00
In an amount deemed appropriate by
the Panel
Pre-judgment interest

Attorneys' Fees	As determined at hearing
Other Costs	As determined at hearing
Other Monetary/Non-Monetary Relief if any:	If deemed just and proper by the Panel, including lost opportunity costs and model portfolio damages.

Respondent requested that the claims be denied.

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. Respondent A.G. Edwards & Sons, Inc. is liable for and shall pay to the Claimants, Mary Davis and Donna Jean Prior, the sum of \$244,625.69 in compensatory damages;
2. In addition, Respondent A.G. Edwards & Sons, Inc. is liable for and shall pay to the Claimants, Mary Davis and Donna Jean Prior, the sum of \$81,541.89 in attorneys' fees. In deciding to award attorneys' fees, the Panel considered the arguments of counsel, as well as the pleadings filed on the parties behalf, and determined that authority existed for an award of attorneys' fees to the Claimants;
3. Furthermore, Respondent A.G. Edwards & Sons, Inc. is liable for and shall pay to the Claimants, Mary Davis and Donna Jean Prior, the sum of \$12,445.00 in costs, representing the reimbursement of the \$300.00 non-refundable filing fee and the \$12,145.00 expert witness fee;
4. The parties shall each bear any additional costs of arbitration they incurred, including any additional attorneys' fees, except for those sums specifically awarded in this decision; and,
5. Any and all relief not specifically addressed herein, including punitive or treble 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	= \$ 300.00
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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 party and the following member fees are assessed:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

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:

Four (4) Hearing sessions @ \$1,125.00	= \$ 4,500.00
Hearing Dates: November 15, 2005 2 sessions	
November 16, 2005 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 4,500.00

The Panel has assessed \$4,500.00 of the forum fees to Respondent A.G. Edwards & Sons, Inc.

SEE SUMMARY

Claimants Mary Davis and Donna Jean Prior are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Refunded by NASD Dispute Resolution	= \$ 1,125.00

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

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 4,500.00</u>
Total Fees	= \$ 9,700.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,500.00

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

NASD Dispute Resolution
Arbitration No. 04-08817
Award Page 5

ARBITRATION PANEL

Walter N. Vernon, III, Esq. - Public Arbitrator, Presiding Chairperson
John Bruce Witwer - Public Arbitrator
David Brian Cohen, CLU - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Walter N. Vernon
Walter N. Vernon, III, Esq.
Public Arbitrator, Presiding Chairperson

1/22/05
Signature Date

John Bruce Witwer
John Bruce Witwer
Public Arbitrator

Signature Date

David Brian Cohen, CLU
David Brian Cohen, CLU
Non-Public Arbitrator

Signature Date

1/23/05 Han
Date of Service (For NASD Dispute Resolution office use only)

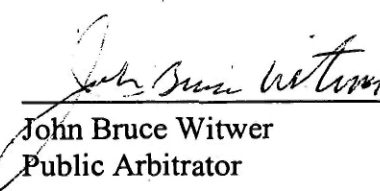
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Public Arbitrator, Presiding Chairperson

Signature Date




John Bruce Witwer
Public Arbitrator

11-23-05
Signature Date

David Brian Cohen, CLU
Non-Public Arbitrator

Signature Date

11/23/05 

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

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Signature Date

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