

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

James L. Gordon

v.

05-00512

Louisville, Kentucky

Respondents

A.G. Edwards & Sons, Inc., and Byron Holley

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**NATURE OF DISPUTE**

Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

James L. Gordon ("**Claimant**") was represented by Edward J. Dovin, Esq., of Dovin Malkin & Ficken, LLC, Atlanta, Georgia.

A.G. Edwards & Sons, Inc. ("**AGE**") and Byron Holley ("**Holley**"), hereinafter collectively referred to as "**Respondents**," were represented by Amy C. Johnson, Esq., of Stoll Keenon & Park, LLP, Lexington Kentucky.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 28, 2005. The Submission Agreement of Claimant was signed on or about November 15, 2004.

The Statement of Answer was filed jointly by AGE and Holley on or about March 22, 2005. The Submission Agreement of Respondent AGE was signed on or about March 22, 2005. The Submission Agreement of Respondent Holley was signed on or about March 14, 2005.

**CASE SUMMARY**

Claimant asserted causes of action including the following: breach of fiduciary duty, negligence, breach of contract, misrepresentations, common law fraud, violations of the Kentucky Consumer Protection Act, violations of the Kentucky Securities Act and failure to supervise. Claimant alleged that, despite his request that his retirement funds be invested in a conservative growth and income portfolio, Respondents instead invested his assets in an aggressive investment strategy which Claimant alleged was overly concentrated in "tech" stocks and that those stocks paid no dividends. Claimant asserted that he needed to generate income from his account to meet his daily living

expenses and by implementing this strategy he was unable to do so. Claimant further alleged because A.G. Edwards failed to supervise the actions of Holley, it was responsible for any losses incurred.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimant was aware from the outset of the risk associated with investing in securities and voluntarily assumed such risk; Claimant's knowing and voluntary assumption of risk was the sole and proximate cause of any alleged damages; Claimant's Statement of Claim failed to state a claim upon which relief can be granted because there is no private right of action for alleged violation of industry rules and regulations; Respondents did not maintain control over Claimant's account, Respondents did not engage in excessive trading in Claimant's account and had no improper purpose in recommending the transactions in Claimant's account other than to comply with the stated investment objectives for the account; by failing to exercise a degree of care over his affairs and investments that an ordinary prudent investor would exercise, Claimant caused or contributed to cause the alleged damages of which he complains herein, and if any award of damages is made, it must be reduced by the percentage of liability assessed to Claimant; and all claims for relief in Claimant's Statement of Claim are barred by the applicable statutes of limitation.

#### **RELIEF REQUESTED**

Claimant requested an award of \$550,000 in compensatory damages, plus punitive damages, costs, attorneys' fees, pre and post-award interest and such other relief the panel deemed just and proper.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

#### **OTHER ISSUES CONSIDERED & DECIDED**

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

#### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have 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 Claimant, James L. Gordon, the sum of Thirty Five Thousand Dollars and No Cents (\$35,000.00) in compensatory damages;

In determining this amount the panel makes the following findings of fact:

“All causes of action against Respondent, A.G. Edwards, & Sons, Inc., are ruled in its favor. However, Claimant’s cause of action for lack of supervision has merit. The panel unanimously rules that Respondent, A.G. Edwards & Sons, Inc., failed to provide proof that it undertook any active supervision of Claimant’s account. This leads the panel to believe that, had more active supervision occurred, a small portion of Claimant’s losses could have been averted.”

2. Claimant’s claims against Respondent, Byron Holley, is denied and dismissed with prejudice;
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, are denied with prejudice; and
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys’ fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 375

#### **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. In this matter, the member firm is A.G. Edwards & Sons, Inc.

Member surcharge = \$ 2,250  
Pre-hearing process fee = \$ 750  
Hearing process fee = \$ 4,000

**Forum Fees and Assessments**

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

Two (2) Pre-hearing sessions with Panel x \$ 1,200 = \$ 2,400

Pre-hearing conferences:	May 31, 2005	1 session
	December 6, 2005	1 session

Nine (9) Hearing sessions with Panel x \$ 1,200 = \$ 10,800

Hearing Dates:	February 7, 2006	2 sessions
	February 8, 2006	3 sessions
	February 9, 2006	3 sessions
	February 10, 2006	1 session

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Total Forum Fees = \$ 13,200

The Arbitration Panel has assessed \$ 13,200 of the forum fees to A.G. Edwards & Sons, Inc.

**FEE SUMMARY**

Claimant, James L. Gordon, is liable for:

<u>Initial Filing Fee</u>	= \$ 375
<u>Total Fees</u>	= \$ 375
<u>Less payments</u>	= \$ 1,575
Balance Refunded By NASD Dispute Resolution	= \$ 1,200

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

Member Fees	= \$ 7,000
Forum Fees	= \$ 13,200
<u>Total Fees</u>	= \$ 20,200
<u>Less payments</u>	= \$ 7,000
Balance Due NASD Dispute Resolution	= \$ 13,200

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

**ARBITRATION PANEL**

Leah M. Balk-Tietlebaum, Esq. - Public Arbitrator, Presiding Chair  
Ameila F. Adams, Esq. - Public Arbitrator  
Frederick W. Snyder, Jr. - Non-Public Arbitrator

Concurring Arbitrators:

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Leah M. Balk-Tietlebaum, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Ameila F. Adams, Esq.  
Public Arbitrator

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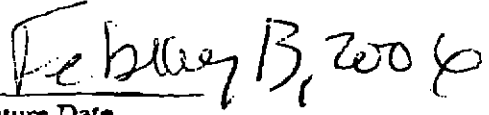
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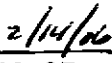
  
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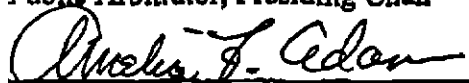
  
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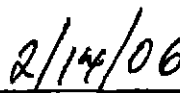
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