

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

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In the Matter of the Arbitration Between:

The Tanya Martino Trust UAD 4/18/97, Claimant v. A.G. Edwards & Sons, Inc., Robert W. Burns, and John J. Humphrey, Respondents

Case Number: 05-01685

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

Jeff D. Ferentz, Esq.  
Nationwide Securities Arbitration  
Services, Inc.  
Newport Beach, California

For Respondents:

Brent J. Burtin, Esq.  
A.G. Edwards & Sons, Inc.  
St. Louis, Missouri

**CASE INFORMATION**

Statement of Claim filed: March 28, 2005

Claimant's Uniform Submission Agreement signed: March 23, 2005

Joint Statement of Answer filed by Respondents: May 31, 2005

Motion to Join Claimant's Brother as an Indispensable Party or, in the Alternative, to Dismiss filed by Respondents as part of their Answer: May 31, 2005

Respondent A.G. Edwards & Sons, Inc.'s Uniform Submission Agreement signed:  
May 31, 2005

Respondent Robert W. Burns' Uniform Submission Agreement signed: April 26, 2005

Respondent John J. Humphrey's Uniform Submission Agreement signed:  
May 12, 2005

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, unsuitability, churning, fraud, deceit and omission of facts, negligence, and failure to supervise. Claimant's causes of action relate to the use of margin and transactions in securities including, but not limited to Powerwave Technologies, Broadcom Corp., Genvec, Human Genome Sciences, Biopure Corp., Nanophase Technologies, Repligen Corp., and Simpletech Inc.

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

### **RELIEF REQUESTED**

Claimant requested \$540,673.00 in compensatory damages, punitive damages, pre- and post-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and requested the expungement of all reference to the above-captioned arbitration from Respondents Robert W. Burns, and John J. Humphrey's registration records maintained by the Central Registration Depository

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

On April 13, 2005, 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.

On May 31, 2005, Respondents filed a Motion to Join Claimant's Brother as an Indispensable Party or, in the Alternative, to Dismiss Claimant's Claim. Claimant filed an Opposition to the Motion on July 25, 2005. On October 11, 2005, after due deliberation, the Panel denied the motion in its entirety.

On March 26, 2006, Respondents filed a Motion to Strike Claimant's Request for Treble Punitive Damages, Attorney's Fee, and Interest.<sup>1</sup> Claimant filed an opposition to the motion on March 30, 2006. On April 12, 2006, after due deliberation, the Panel denied

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<sup>1</sup> Claimant requested punitive damages but did not request treble damages in the Statement of Claim.

the motion without prejudice.

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 A.G. Edwards & Sons, Inc. and John J. Humphrey are jointly and severally liable to and shall pay Claimant The Tanya Martino Trust UAD 4/18/97 the sum of \$450,000.00 in compensatory damages.
- 2) This Award shall bear simple interest at the rate of 10% per annum on any balance that remains unpaid thirty (30) days after receipt hereof, unless a motion to vacate has been filed with a court of competent jurisdiction. If this award is the subject of a motion to vacate that is subsequently denied, this award shall bear simple interest at the rate of 10% per annum on any balance that remains unpaid from date of the court's order denying said motion to vacate.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Robert W. Burns' registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Robert W. Burns must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: Robert W. Burns was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) 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>

### **Adjournment Fees**

The following adjournment fees are assessed:

April 4-7, 2006 adjournment requested by Claimant	= \$ 1,200.00
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The Panel waived assessment of the Adjournment fee.

### **Three-Day Cancellation Fees**

Three-day cancellation fees apply when a hearing on the merits is postponed or settled within three business days before the start of the first scheduled hearing session. The following three-day cancellation fees are assessed:

Cancellation of April 4-7, 2006 hearings dates:	= \$ 300.00
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The Panel waived assessment of the Three-Day Cancellation fee.

### **Forum Fees and Assessments**

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

One (1) Pre-hearing conference session

with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: September 6, 2006 1 session

Two (2) Pre-hearing conference sessions  
with the Panel @ \$1,200.00/session = \$ 2,400.00  
Pre-hearing conference(s): July 22, 2005 1 session  
June 19, 2006 1 session

Ten (10) Hearing sessions @ \$1,200.00/session = \$12,000.00  
Hearings: November 6, 2006 2 sessions  
November 7, 2006 2 sessions  
November 8, 2006 2 sessions  
November 9, 2006 2 sessions  
November 10, 2006 2 sessions

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**Total Forum Fees = \$14,850.00**

1. The Panel assessed \$7,425.00 of the forum fees jointly and severally to Claimant the Tanya Martino Trust UAD 4/18/97.
2. The Panel assessed \$7,425.00 of the forum fees jointly and severally to Respondents A.G. Edwards & Sons, Inc. and John J. Humphrey.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Respondents requested 97 photocopies @ \$0.50 = \$ 48.50

Claimant requested 15 photocopies @ \$0.50 = \$ 7.50

**Fee Summary**

1. Claimant the Tanya Martino Trust UAD 4/18/97 is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 7,425.00
Administrative Costs	= \$ 7.50
Total Fees	= \$ 7,807.50
Less payments	= \$(1,575.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 6,232.50</b>

2. Respondent A.G. Edwards & Sons, Inc. is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Less payments	= \$(7,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents A.G. Edwards & Sons, Inc., Robert and John J. Humphrey are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 7,425.00
Administrative Costs	= \$ 48.50
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 7,473.50</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**

Newton Ira Waldman, Esq.	-	Public Arbitrator, Presiding Chair
Anita Rae Shapiro, Esq.	-	Public Arbitrator
Robert Bruce MacDonald	-	Non-Public Arbitrator

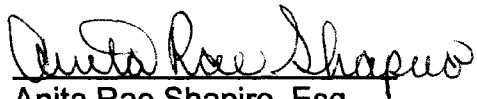
**Concurring Arbitrators' Signatures**



Newton Ira Waldman, Esq.  
Chair, Public Arbitrator

11/10/06

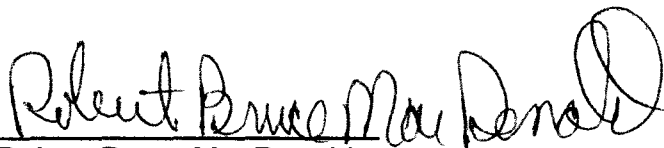
Signature Date



Anita Rae Shapiro, Esq.  
Public Arbitrator

11/10/06

Signature Date



Robert Bruce MacDonald  
Non-Public Arbitrator

11/10/06

Signature Date

11/10/06

Date of Service