

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

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In the Matter of the Arbitration Between

Claimant

Mary M. Johnston

v.

05-03127

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**

Mary M. Johnston ("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., and Anita M. Britton, Esq., of Stoll Keenon & Park, LLP, Lexington Kentucky and Brent Burtin, Esq., of A.G. Edwards & Sons, Inc., St. Louis Missouri.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 16, 2005. The Submission Agreement of Claimant was signed on or about June 13, 2005.

The Statement of Answer was filed jointly by AGE and Holley on or about August 29, 2005. The Submission Agreement of Respondent AGE was signed on or about August 26, 2005. The Submission Agreement of Respondent Holley was signed on or about August 26, 2005.

**CASE SUMMARY**

Claimant asserted causes of action including the following: breach of fiduciary duty, negligence, breach of contract, common law fraud and misrepresentation, violations of the Securities Act of Kentucky, violation of Kentucky's Consumer Protection Act and failure to supervise. The causes of action related to the suitability of the alleged recommendation that Claimant roll her retirement assets over and transfer the funds into her existing IRA with Respondents. Claimant further alleged that

Respondents never properly diversified her account and instead advised her to leave virtually all of her assets in Texas Instruments stock.

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 her affairs and investments that an ordinary prudent investor would exercise, Claimant caused or contributed to cause the alleged damages of which she 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 \$184,000 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. Claimant's claims, each and all, are denied and dismissed with prejudice in their entirety;

2. 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
3. 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 = \$ 300

#### **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 = \$ 1,700  
Pre-hearing process fee = \$ 750  
Hearing process fee = \$ 2,750

#### **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:

One (1) Pre-hearing session with Panel x \$ 1,125 = \$ 1,125

Pre-hearing conference: December 5, 2005 1 session

Four (4) Hearing sessions with Panel x \$ 1,125 = \$ 4,500

Hearing Dates: March 22, 2006 2 sessions  
March 23, 2006 2 sessions

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Total Forum Fees = \$ 5,625

The Arbitration Panel has assessed \$ 2,812.50 of the forum fees to Mary M. Johnston.

The Arbitration Panel has assessed \$ 2,812.50 of the forum fees jointly and severally to A.G. Edwards & Sons, Inc., and Byron Holley.

**FEE SUMMARY**

Claimant, Mary M. Johnston, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,812.50
Total Fees	= \$ 3,112.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,687.50

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

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, A.G. Edwards & Sons, Inc., and Byron Holley, are jointly and severally liable for:

Member Fees	= \$ 2,812.50
Total Fees	= \$ 2,812.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,812.50

**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**

Hugh C. Durbin - Public Arbitrator, Presiding Chair  
Ameila F. Adams, Esq. - Public Arbitrator  
Coleman Robert Perry, Jr., CFP - Non-Public Arbitrator

Concurring Arbitrators:

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Hugh C. Durbin  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Ameila F. Adams, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Coleman Robert Perry, Jr., CFP  
Non-Public Arbitrator

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

3/20/06  
\_\_\_\_\_  
Date of Service (NASD use only)

**ARBITRATION PANEL**

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Ameila F. Adams, Esq. - Public Arbitrator  
Coleman Robert Perry, Jr., CFP - Non-Public Arbitrator

Concurring Arbitrators:

Hugh C. Durbin

Hugh C. Durbin  
Public Arbitrator, Presiding Chair

30 March 2006

Signature Date

Ameila F. Adams, Esq.  
Public Arbitrator

Signature Date

Coleman Robert Perry, Jr., CFP  
Non-Public Arbitrator

Signature Date

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**Concurring Arbitrators:**

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Hugh C. Durbin  
Public Arbitrator, Presiding Chair



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Arneila F. Adams, Esq.  
Public Arbitrator

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Signature Date

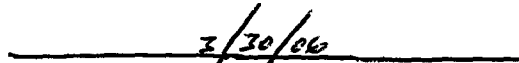
  
Signature Date

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Coleman Robert Perry, Jr., CFP  
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Concurring Arbitrators:

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Hugh C. Durbin  
Public Arbitrator, Presiding Chair

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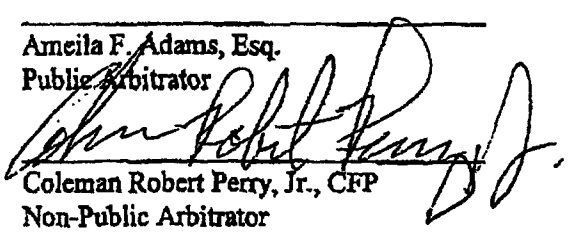
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Ameila F. Adams, Esq.  
Public Arbitrator

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Signature Date

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Coleman Robert Perry, Jr., CFP  
Non-Public Arbitrator

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3-29-06  
Signature Date

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1/30/06  
Date of Service (NASD use only)