

**Award  
NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Name of the Claimant

Jack T. Cartwright

Case Number: 05-03229

Names of the Respondents

A.G. Edwards & Sons, Inc.

Roxbury Capital Management, LLC

Hearing Site: Orlando, FL

---

Nature of the Dispute: Customer vs. Member and Non-Member.

**REPRESENTATION OF PARTIES**

For Jack T. Cartwright, hereinafter referred to as "Claimant": Robert E. Austin, Jr., Esq.,  
Law Offices of Robert E. Austin, Jr., Leesburg, FL.

For Respondent A.G. Edwards & Sons, Inc. ("AGE"): John D. Mullen, Esq., Phelps  
Dunbar LLP, Tampa, FL.

For Respondent Roxbury Capital Management, LLC ("Roxbury"): Navid Yadegar, Esq.,  
Proskauer Rose LLP, Los Angeles, CA.

**CASE INFORMATION**

Statement of Claim filed on or about: June 23, 2005.

Claimant signed the Uniform Submission Agreement: June 17, 2005.

Statement of Answer filed by Respondent AGE on or about: August 23, 2005.

Respondent AGE signed the Uniform Submission Agreement: July 15, 2005.

Respondent Roxbury did not file a Statement of Answer or executed Uniform  
Submission Agreement.

Motion of Specially Appearing Respondent Roxbury Capital Management, LLC, to  
Dismiss Claimant's Statement of Claim and Request for Monetary Sanctions ("Motion to  
Dismiss") filed on or about: February 1, 2006.

Claimant's Response to Respondent Roxbury's Motion to Dismiss filed on or about:  
February 28, 2006.

Reply in Further Support of Respondent Roxbury's Motion to Dismiss filed on or about:  
March 7, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; breach of fiduciary  
duty; negligence; unsuitability of assets and allocations; failure to supervise;  
misrepresentation and failure to disclose; violations of statutory provisions and  
professional and ethical conduct rules; and, common law fraud. The causes of action  
relate to Respondents' alleged failure to purchase and sell various shares of stocks or

to otherwise create a suitable diversified portfolio in Claimant's managed account and Respondent AGE's failure to alert Claimant regarding the management conditions of Respondent Roxbury.

Unless specifically admitted in its Answer, Respondent AGE denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$447,546.12, including cost of lost opportunity, interest, expenses and disbursements, lost benefit of the bargain, costs, reimbursement of filing fee and forum fees, and such other relief deemed proper and just.

Respondent AGE requested dismissal of the Statement of Claim with prejudice, costs and attorneys' fees for defending this action, and such other relief as the undersigned arbitrators (the "Panel") deemed appropriate.

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

Respondent Roxbury alleged in its Motion to Dismiss that: 1) it is not a member of NASD; 2) it is not subject to the jurisdiction of NASD; 3) it did not consent to the jurisdiction of NASD; and, 4) its written agreement with Claimant explicitly provides that any dispute between Claimant and Respondent Roxbury will be arbitrated before the American Arbitration Association. On or about April 18, 2006, the Panel issued an order which granted Respondent Roxbury's Motion to Dismiss.

Respondent Roxbury did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement.

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.

### **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:

Respondent AGE is liable for its failure to disclose and shall pay to Claimant compensatory damages in the sum of \$25,000.00, pre-judgment interest specifically excluded.

Any and all requests for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure ("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

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent AGE is a party and member firm.

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:

No adjournment fees were assessed during these proceedings.

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

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were assessed during these proceedings.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

### **Forum Fees and Assessments**

The Panel has 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 with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: August 28, 2006 1 session

Two (2) Pre-hearing sessions with the Panel @ \$1,125.00/session = \$2,250.00  
Pre-hearing conferences: April 18, 2006 1 session  
November 3, 2006 1 session

|                                                 |              |
|-------------------------------------------------|--------------|
| Eight (8) Hearing sessions @ \$1,125.00/session | = \$9,000.00 |
| Hearing Dates:                                  |              |
| November 7, 2006                                | 2 sessions   |
| November 8, 2006                                | 2 sessions   |
| November 9, 2006                                | 2 sessions   |
| November 10, 2006                               | 2 sessions   |

---

|                  |               |
|------------------|---------------|
| Total Forum Fees | = \$11,700.00 |
|------------------|---------------|

The Panel has assessed \$5,850.00 of the forum fees to Claimant.  
The Panel has assessed \$5,850.00 of the forum fees to Respondent AGE.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

|                                     |               |
|-------------------------------------|---------------|
| Initial Filing Fee                  | = \$ 300.00   |
| Forum Fees                          | = \$ 5,850.00 |
| Total Fees                          | = \$ 6,150.00 |
| Less payments                       | = \$ 1,425.00 |
| Balance Due NASD Dispute Resolution | = \$ 4,725.00 |

Respondent AGE is solely liable for:

|                                     |               |
|-------------------------------------|---------------|
| Forum Fees                          | = \$ 5,850.00 |
| Member Fees                         | = \$ 5,200.00 |
| Total Fees                          | = \$11,050.00 |
| Less payments                       | = \$ 5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 5,850.00 |

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

**ARBITRATION PANEL**

|                                |   |                                          |
|--------------------------------|---|------------------------------------------|
| Sherman S. Dantzler            | - | Public Arbitrator, Presiding Chairperson |
| Pasquale Anthony Mercurio, MBA | - | Public Arbitrator                        |
| Marcy R. Gilroy                | - | Non-Public Arbitrator                    |

**Concurring Arbitrators' Signatures**

/s/  
Sherman S. Dantzler  
Public Arbitrator, Presiding Chairperson

                      
Signature Date

/s/  
Pasquale Anthony Mercurio, MBA  
Public Arbitrator

                      
Signature Date

/s/  
Marcy R. Gilroy  
Non-Public Arbitrator

                      
Signature Date

November 16, 2006  
Date of Service (For NASD Dispute Resolution use only)

Nov. 15. 2006 11:10AM NASD

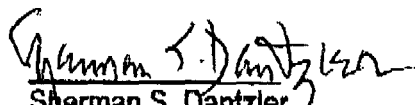
No. 8982 P. 6/6

NASD Dispute Resolution

Arbitration No. 05-03229

Award Page 5 of 5

**Concurring Arbitrators' Signatures**



Sherman S. Dantzler

Public Arbitrator, Presiding Chairperson

15 Nov. 06

Signature Date

Pasquale Anthony Mercurio, MBA  
Public Arbitrator

Signature Date

Marcy R. Gilroy  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

11/15/2006 14:01

Nov 15, 2006 11:08AM NASD

No. 8982 P. 6/5 PAGE 01

NASD Dispute Resolution

Arbitration No. 05-03229

Award Page 5 of 5

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Sherman S. Dantzler  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
*Pasquale Anthony Mercurio*  
Pasquale Anthony Mercurio, MBA  
Public Arbitrator

\_\_\_\_\_  
*11/15/2006*  
Signature Date

\_\_\_\_\_  
Marcy R. Gilroy  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

Nov. 15, 2006 3:03PM NASD

No. 899/ P. 6

NASD Dispute Resolution

Arbitration No. 05-03229

Award Page 5 of 5

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Sherman S. Dantzler  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Pasquale Anthony Mercurio, MBA  
Public Arbitrator

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

  
\_\_\_\_\_  
Marcy R. Gilroy  
Non-Public Arbitrator

11/15/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)