

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

---

In the Matter of the Arbitration Between:

Name of the Claimant/Counter-Respondent  
J. Stephanie Venza, individually, and  
As Executrix of The Estate of John L. Venza

Case Number: 05-03278

Name of the Respondents/Counter-Claimant  
A.G. Edwards & Sons, Inc., and  
Perry J. Lyons

Hearing Site: Dallas, Texas

---

**NATURE OF THE DISPUTE**

Public Customer v. Member Firm and Associated Person  
Member Firm vs. Public Customer

**REPRESENTATION OF PARTIES**

Claimant/Counter-Respondent J. Stephanie Venza, individually, and As Executrix of The Estate of John L. Venza, hereinafter referred to as "Claimant": John E. Dees, Jr., Esq. of Trinidad, Texas.

Respondent/Counterclaimant A.G. Edwards & Sons, Inc. ("AGE") and Respondent Perry J. Lyons ("Lyons"), hereinafter collectively referred to as "Respondents": Dennis J. Capriglione, Esq., of A.G. Edwards & Sons, Inc., located in St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed: June 28, 2005.

Claimant signed the Uniform Submission Agreement: June 24, 2005.

Statement of Answer, Motion to Dismiss or Stay, or for More Definite Statement, and Counterclaim filed by Respondents on: September 12, 2005.

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

Respondent Lyons signed the Uniform Submission Agreement: August 23, 2005.

Claimant's Response to Respondents' Motion to Dismiss or Stay, or for More Definite Statement, and Counterclaim filed: September 19, 2005.

Respondents' Supplement to the Motion to Dismiss or Stay, or for More Definite Statement filed on: December 9, 2005.

*Claimant's Supplemental Response to Respondents' Motion to Dismiss or Stay, or for More Definite Statement* filed on: January 12, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action: unsuitable recommendations; failure to supervise; omissions and misrepresentations in connection with the purchase and sale of securities; violation of the Texas Securities Act and a violation of the Rules and Regulations of the NASD. The causes of action related to the purchases of Star Gas Partners, a limited partnership traded on the New York Stock Exchange, the liquidation of other equities in the account and margin debt created.

Unless specifically admitted in their Answer, Respondents 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. The Claim fails to state a Claim for relief for violation of NASD or NYSE rules or regulations because there is no private cause of action for the violation of such rules or regulations;
3. Claimant failed to act promptly and with due diligence to mitigate damages and is barred from recovering such damages;
4. The claims are barred because Claimant authorized the alleged conduct that occurred in connection with the accounts;
5. Claimant has waived and/or is estopped from asserting the claims by virtue of her conduct and dealings with Respondents;
6. Claimant ratified the alleged conduct about which she complains and therefore, the claims are barred;
7. The claims are barred in full or in part by applicable statutes of limitation;
8. Claimant is barred from recovery for any alleged conduct of AGE by the doctrine of laches;
9. The claims are barred in full or in part by assumption of risk;
10. Claimant is barred from recovering from AGE for failing to notify AGE of any acts or omissions after receipt of written confirmations, account statements and other documents;
11. Claimant is barred from recovering under the doctrines of ratification, accounts stated, estoppel, waiver and laches because Respondents relied upon Claimant's silence and inaction;
12. Claimant has alleged no activity or specific conduct which resulted in negligence on behalf of Respondents and any claims based upon the theory of negligence should be dismissed;
13. The alleged damages were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in the accounts for which Respondents are neither liable nor responsible;
14. Claimant has alleged no activity or specific conduct which resulted in a breach of fiduciary duty and any such claims should be dismissed;

15. Respondents did not know, and in the exercise of reasonable care could not have known, of any alleged material misleading statements or omissions in the Claim and did not directly or indirectly induce any alleged acts of fraud or misrepresentation;
16. Claimant has alleged no activity or specific conduct which resulted in AGE's negligent supervision of Lyons and the Claim should be dismissed;
17. Claimant is barred by her contributory negligence from recovering from Respondents;
18. The claims must be dismissed or reduced under the doctrines of contributory negligence, comparative fault or comparative negligence in accordance with applicable law; and,
19. Claimant has failed to allege a factual or legal basis for an award of attorneys' fees and the claims must be dismissed.

Respondent AGE counterclaimed for breach of the margin agreement executed by the parties.

Claimant asserted that the margin debit should be cancelled because she was entitled to an offset as a result of the actions of Respondents.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 425,000.00 (\$710,000.00 minus the unsecured debit of \$285,000.00)
Punitive Damages	\$1,275,000.00
Interest	6 per cent per annum
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary/Non-Monetary Relief if any:	As determined by the Panel

Respondents requested that the Panel dismiss all of Claimant's claims with prejudice, award to AGE any sums due and owing it under the margin agreement in the amount of \$297,907.69 including interest, assess the costs of the proceeding to Claimant, enter an order expunging the record of this proceeding from Lyon's CRD record, and such other relief deemed just and proper under the circumstances.

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

On February 23, 2006, the Panel held a telephonic conference to hear argument from the parties regarding Respondents' Motion to Dismiss or Stay, or for More Definite Statement. After hearing argument, the Panel entered an Order on February 23, 2006 stating:

1. On or before March 23, 2006, Claimant shall submit a letter to counsel for class action plaintiffs in Case No. 3:04-cv-1766; *In Re Gas Securities Litigation*; in the United States District Court for the District Court of Connecticut; indicating that the Claimants do not intend to participate in the class action, that Claimants intend to opt out of the class when certified, and that this election to opt out is irrevocable. A copy of such letter shall be submitted to the NASD in this matter, copied to counsel for Respondent, and shall be made part of the record. If more formal opt out procedures are in place, an opt-out form may be substituted for the letter reference in this paragraph;
2. Respondents' Motion to Dismiss is denied;
3. Respondents' Motion to Stay is denied; and,
4. Respondents' Motion for More Definite Statement is denied as moot.

Pursuant to the Order, Claimant filed the opt-out letter on March 13, 2006.

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:

1. The claims filed by Claimant J. Stephanie Venza, individually, and as Executrix for the estate of John L. Venza, against Respondents A.G. Edwards and Sons, Inc. and Perry J. Lyons, are dismissed and denied in their entirety;
2. The Panel vacates that portion of its February 23, 2006 Order that required Claimant to opt out of participation in the class action suit pending in the United States District Court for the District of Connecticut, styled *In Re Star Gas Securities*, Case No. 3:04-cv-1766. To the extent permitted by that Court, Claimant may rescind her opt out election (notwithstanding previous requirements imposed by this Panel) and may participate in the class action. Claimant's "opt out letter" shall be null and void;
3. Claimant J. Stephanie Venza, individually, and as Executrix for the estate of John L. Venza, is liable for and shall pay to the Respondent, A.G. Edwards and Sons, Inc., the sum of \$282,876.46 as compensatory damages on Respondent's counterclaim, plus interest at the rate of 6% per annum accruing from the date of this Award until the sum is paid in full;
4. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated in this decision; and,
5. Any and all relief not specifically addressed herein, including punitive 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	= \$ 500.00
Counterclaim filing fee	= \$ 1,000.00

#### **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 and Sons, Inc. is a party and the following member fees are assessed:

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

#### **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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences:	
December 2, 2005 1 session	
February 23, 2006 1 session	
Six (6) Hearing sessions @ \$1,200.00	= \$ 7,200.00
Hearing Dates:	
July 18, 2006 2 sessions	
July 19, 2006 2 sessions	
July 20, 2006 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 9,600.00

The Panel has assessed \$4,800.00 of the forum fees to the Claimant J. Stephanie Venza, individually, and as Executrix for the estate of John L. Venza. The Panel has assessed the remaining \$4,800.00 of the forum fees, jointly and severally, to Respondents A.G. Edwards and Sons, Inc., and Perry J. Lyons.

**FEE SUMMARY**

Claimant, J. Stephanie Venza, individually, and as Executrix for the estate of John L. Venza, is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 4,800.00
Total Fees	= \$ 5,300.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

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

CounterClaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 8,550.00
Total Fees	= \$ 9,550.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 1,000.00

Respondents, A.G. Edwards and Sons, Inc. and Perry J. Lyons, are jointly and severally liable for:

Forum Fees	= \$ 4,800.00
Total Fees	= \$ 4,800.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,800.00

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

**ARBITRATION PANEL**

Jeff Abrams - Public Arbitrator, Presiding Chairperson  
Carol A. Freeland - Public Arbitrator  
Robert G. Clark - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Jeff Abrams  
Jeff Abrams  
Public Arbitrator, Presiding Chairperson

08/04/06  
Signature Date

/s/ Carol A. Freeland  
Carol A. Freeland  
Public Arbitrator

08/04/06  
Signature Date

/s/ Robert G. Clark  
Robert G. Clark  
Non-Public Arbitrator

08/04/06  
Signature Date

08/08/06  
Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

Jeff Abrams - Public Arbitrator, Presiding Chairperson  
Carol A. Freeland - Public Arbitrator  
Robert G. Clark - Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Jeff Abrams  
Public Arbitrator, Presiding Chairperson

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

Carol A. Freeland  
Carol A. Freeland  
Public Arbitrator

8-4-06  
Signature Date

\_\_\_\_\_  
Robert G. Clark  
Non-Public Arbitrator

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

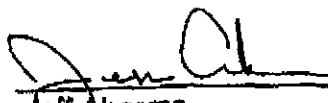
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)



ARBITRATION PANEL

Jeff Abrams - Public Arbitrator, Presiding Chairperson  
Carol A. Freeland - Public Arbitrator  
Robert G. Clark - Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Jeff Abrams  
Public Arbitrator, Presiding Chairperson

8-4-06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Carol A. Freeland  
Public Arbitrator

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

\_\_\_\_\_  
Robert G. Clark  
Non-Public Arbitrator

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

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

ARBITRATION PANEL

Jeff Abrams - Public Arbitrator, Presiding Chairperson  
Carol A. Freeland - Public Arbitrator  
Robert G. Clark - Non-Public Arbitrator

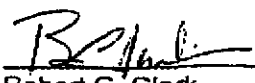
Concurring Arbitrators' Signatures

\_\_\_\_\_  
Jeff Abrams  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Carol A. Freeland  
Public Arbitrator

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

  
\_\_\_\_\_  
Robert G. Clark  
Non-Public Arbitrator

8/4/06  
\_\_\_\_\_  
Signature Date

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