

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

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In the Matter of the Arbitration Between:

Edna E. Hilbert, Individually and as Trustee of the  
Carl G. Hilbert Trust and Edna E. Hilbert Trust,  
Ann Spooner, Individually and as Trustee of the  
Carl G. Hilbert Trust, and Robert Spooner,  
Claimants,

Case Number: 05-03583

Hearing Site: St. Louis, Missouri

v.

A.G. Edwards & Sons, Inc., Christopher Michael Maddock and  
Stephen Brent Sutter,  
Respondents.

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Nature of the Dispute: Customers vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Edna Hilbert ("Hilbert"), Individually and as Trustee of the Carl G. Hilbert and Edna E. Hilbert Trust, Ann Spooner, Individually and as Trustee of the Carl G. Hilbert Trust, and Robert Spooner (the "Spooners"), hereinafter collectively referred to as "Claimants": Rosalind Robertson, Esq. of Simmons Cooper, LLC, located in East Alton, Illinois.

A.G. Edwards & Sons, Inc. ("Edwards"), Christopher Michael Maddock ("Maddock") and Stephen Brent Sutter ("Sutter"), hereinafter collectively referred to as "Respondents": Matthew Salamon, Esq. of A.G. Edwards & Sons, Inc., located in St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: July 13, 2005

Hilbert signed the Uniform Submission Agreement: June 20, 2005

The Spoonsers jointly signed the Uniform Submission Agreement: June 20, 2005

Statement of Answer filed by Respondents, Edwards, Maddock and Sutter, on or about:  
September 6, 2005

Respondent A.G. Edwards signed the Uniform Submission Agreement: September 2, 2005

Respondent Sutter signed the Uniform Submission Agreement: August 5, 2005

Respondent Maddock did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, breach of contract, suitability, negligence and failure to supervise. The causes of action relate to various investments, including Dreyfus Premier Technology Growth Fund, Putnam International Voyager Fund Class C, Growth Opportunities Fund Class C, Putnam OTC & Emerging Growth Fund Class C. Claimants asserted that these were aggressive and unsuitable recommendations which did not meet their investment needs and objectives.

Unless specifically admitted in their Answer, Respondents, Edwards, Maddock and Sutter denied the allegations made in the Statement of Claim and asserted various affirmative defenses:

1. Claimants failed to act promptly and with due diligence to mitigate any alleged damages after Claimants knew or should have known of the alleged facts and circumstances of which Claimants complain.
2. Claimants waived and/or are estopped from asserting claims against Respondents by virtue of their conduct and dealings with Respondents. Claimants are barred from recovering from Respondents under the doctrines of account stated, estoppel, waiver and laches, because Respondents relied upon the Claimants to reasonably monitor their accounts and relied upon Claimants' silence and acquiescence in response to continued notice of trades, transactions and account status.
3. Claimants ratified the alleged conduct about which they now complain.
4. By failing to exercise that degree of care over their affairs and investments which ordinarily prudent investors would exercise, Claimants caused or contributed to cause the alleged damage of which Claimants complain herein, and should be barred from recovering any alleged damages based on their own contributory negligence or comparative fault.
5. Claimants were aware from the outset of the potential risks of loss associated with investing in securities, and they voluntarily and knowingly assumed such risks. Claimants cannot be entitled to recover for any alleged damages resulting from the disclosed and known risks which Claimants voluntarily assumed.
6. Damages or losses alleged by Claimants were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in Claimants' accounts for which Respondents are not liable or responsible.
7. The Statement of Claim and all allegations set forth in same fail to state a claim against Respondents upon which relief can be granted.
8. As a result of Claimants' failure to object or notify Respondents of the acts or omissions of which Claimants complain, Claimants are barred from recovering from Respondents under Section 8-319 of the Uniform Commercial Code as enacted in the State of Missouri. To the extent Claimants allege damages were sustained after that time, Claimants are barred from recovering such damages.

### **RELIEF REQUESTED**

Claimant Edna Hilbert requested \$297,000.00 in compensatory damages; Ann and Robert Spooner requested \$119,000.00 in compensatory damages; both Claimants also requested punitive damages, pre-judgment and post-judgment interest and attorney's fees.

Respondents, Edwards, Maddock and Sutter, requested that the Statement of Claim be dismissed with prejudice, that they be awarded costs, expungement of any references to these proceedings from their respective professional records, and for any and further relief deemed appropriate.

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

Respondent, Christopher Michael Maddock, did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

### **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. Respondents, A.G. Edwards & Sons, Inc., Christopher Michael Maddock and Stephen Brent Sutter, are jointly and severally liable for and shall pay Claimants, Edna E. Hilbert and Ann Spooner, Trustees of the Carl G. Hilbert and Edna E. Hilbert Trust, the sum of \$130,500.00 as compensatory damages, plus interest at the rate of 9.00% per annum to accrue 31 days after the date the Award is served until the Award is paid in full.
2. Respondents, A.G. Edwards & Sons, Inc., Christopher Michael Maddock and Stephen Brent Sutter, are jointly and severally liable for and shall pay Claimants, Ann Spooner, Individually, and Robert Spooner, the sum of \$42,000.00 as compensatory damages, plus interest at the rate of 9.00% per annum to accrue 31 days after the date the Award is served until the Award is paid in full.
3. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
4. 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 = \$ 300.00

#### **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 persons at the time of the events giving rise to the dispute. Accordingly, A.G. Edwards & Sons, Inc is a party and is assessed the following fees:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **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 arbitrators, including a pre-hearing conference with the arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Decisions on discovery-related motions on the papers with (1) one arbitrator @ \$200.00	= \$ 600.00
Respondent submitted three (3) discovery-related motions	

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00  
Pre-hearing conference: November 3, 2005 1 session

Six (6) Hearing sessions @ \$1,124.00 = \$6,750.00

Hearing Dates: May 31, 2006 2 sessions  
June 1, 2006 2 sessions  
June 2, 2006 2 sessions

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Total Forum Fees = \$8,475.00

The Panel has assessed 100% of the total forum fees in the amount of \$8,475.00 jointly and severally to Respondents, A.G. Edwards & Sons, Inc., Christopher Michael Maddock and Stephen Brent Sutter.

### Fee Summary

1. Claimant, Edna E. Hilbert, Individually and as Trustee for the Carl G. Hilbert and Edna E. Hilbert Trust, and Ann Spooner, Individually and as Trustee for the Carl. G. Hilbert Trust, and Robert Spooner, are jointly and severally liable for:

Initial Filing Fee = \$ 300.00  
Less payments = \$1,700.00  
Refund Due from NASD Dispute Resolution = \$1,400.00

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

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

3. Respondents, A.G. Edwards & Sons, Inc., Christopher Michael Maddock and Stephen Brent Sutter, are jointly and severally liable for:

Forum Fees = \$8,475.00  
Less payments = \$ 0.00  
Balance Due NASD Dispute Resolution = \$8,475.00

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

### ARBITRATION PANEL

Keith E. Mattern, Esq.	-	Public Arbitrator, Presiding Chairperson
Michael L. Lyons, Esq.	-	Public Arbitrator
Brian L. Evans	-	Non-Public Arbitrator

### Concurring Arbitrators' Signatures

/s/ Keith E. Mattern, Esq.  
Keith E. Mattern, Esq.  
Public Arbitrator, Presiding Chairperson

6/7/06  
Signature Date

/s/ Michael L. Lyons, Esq.  
Michael L. Lyons, Esq.  
Public Arbitrator

6/7/06  
Signature Date

/s/ Brian L. Evans  
Brian L. Evans  
Non-Public Arbitrator

6/8/06  
Signature Date

6/7/06  
Date of Service (For NASD Dispute Resolution use only)

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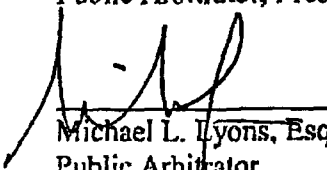
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