

# **Award**

## **NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Beagle, Burke & Associates as Guardian for James F. Hazel, Claimant v. A.G. Edwards & Sons, Inc. and Dean G. Alsup, Respondents

Case Number: 05-03739

Hearing Site: Portland, Oregon

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

### **REPRESENTATION OF PARTIES**

For Claimant:

Gary M. Berne, Esq.  
Joshua L. Ross, Esq.  
Stoll Stoll Berne Lotking &  
Schlachter  
Portland, Oregon

For Respondents:

James C. Browning, Jr., Esq.  
A.G. Edwards & Sons, Inc.  
St. Louis, Missouri

### **CASE INFORMATION**

Statement of Claim filed: July 20, 2005

Claimant's Uniform Submission Agreement signed: July 20, 2005

Joint Statement of Answer, Motion to Dismiss and Counterclaim against Erna Hazel  
filed by Respondents: September 13, 2005

Respondent A.G. Edwards & Sons, Inc. Uniform Submission Agreement signed:  
September 13, 2005

Respondent Dean G. Alsup's Uniform Submission Agreement signed: August 13, 2005

### **CASE SUMMARY**

Claimant alleged violation of the Washington Securities Law, violation of the federal securities laws, negligence, fraud, negligent misrepresentation, breach of fiduciary duty and fair practice, negligent supervision, unsuitability, respondeat superior, violation of the "Know Your Customer" rules and rules and standards pertaining to customer checks, funds, and other assets. Claimant's allegations involved the sale of M&T Bank stock.

Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim.

In their Counter-claim, Respondents/Counter-claimants alleged that Claimant and his wife, Erna Hazel, executed a Joint Account Agreement which empowered Erna Hazel to execute the sale of M&T Bank stock and make withdrawals from Claimant's account.

Counter-Respondent Erna Hazel was never served with the Counter-claim and did not file a response to the counter-claim.

### **RELIEF REQUESTED**

Claimant requested unspecified compensatory damages, unspecified 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, expungement of all reference to the above captioned arbitration from Respondent Dean Alsup's registration records maintained by the NASD Central Registration Depository ("CRD"), and costs, including attorney's fees.

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

Respondents did not serve the Counter-Claim on Counter-Respondent Erna Hazel. As a result, the Counter-Claim was deemed not filed.

At the hearing, after the close of the Claimant's case, Respondent moved the Panel to issue an Order granting summary judgment and dismissing Claimant's case in its entirety. After due deliberation, the Panel denied the motion.

### **FINDINGS AND CONCLUSIONS**

The panel finds that the broker met industry requirements regarding his dealings with Claimant, and that the broker's customer contact records were inadequate. However, as such recordkeeping did not lead to the customer's loss, damages cannot be awarded.

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) Claimant's claims are denied in their entirety.
- 2) Respondents' Counterclaim against Edna Hazel is dismissed in its entirety.
- 3) Respondent Dean G. Alsup's Request for Expungement is denied.
- 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	= \$ 250.00
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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	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
<b>Total Member Fees</b>	<b>= \$ 4,450.00</b>

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

(1) Pre-hearing conference session with the Chair @ \$450.00/session	=\$ 450.00
Pre-hearing conference August 3, 2006	1 session

(1) Pre-hearing conference sessions with the Panel @ \$1,000.00/session	= \$1,000.00
Pre-hearing conference: November 30, 2005	1 session

(6) Hearing sessions @ \$1,000.00/session	= \$6,000.00
Hearings: September 26, 2006	2 sessions
September 27, 2006	2 sessions
September 28, 2006	2 sessions

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<b>Total Forum Fees</b>	<b>= \$7,450.00</b>
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The Panel assessed \$7,450.00 of the forum fees to Respondent A.G Edwards & Sons.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
<b>Refund Due Claimant</b>	<b>= \$(1,175.00)</b>

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

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 7,450.00
<b>Total Fees</b>	<b>= \$11,900.00</b>
<u>Less payments</u>	<u>= \$(4,450.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 7,450.00</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**

Nancy E. Hochman, Esq.	-	Public Arbitrator, Presiding Chair
Clyde Fahlman	-	Public Arbitrator
R. Lee Smith	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Nancy E. Hochman, Esq.  
Chair, Public Arbitrator

10/12/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Clyde Fahlman  
Public Arbitrator

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

\_\_\_\_\_  
R. Lee Smith  
Non-Public Arbitrator

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

10/12/06  
\_\_\_\_\_  
Date of Service

**ARBITRATION PANEL**

Nancy E. Hochman, Esq.  
Clyde Fahlman  
R. Lee Smith

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Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

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Chair, Public Arbitrator

  
Clyde Fahlman  
Public Arbitrator

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R. Lee Smith  
Non-Public Arbitrator

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Nancy E. Hochman, Esq.  
Chair, Public Arbitrator

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Signature Date

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Clyde Fahlman  
Public Arbitrator

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Signature Date

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R. Lee Smith  
Non-Public Arbitrator

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10-11-05  
Signature Date

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10/12/06  
Date of Service