

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

John D. Carter, Jerry W. Munday,
and Stephen A. Smith

vs.

Case Number: 05-04490
Hearing Site: Louisville, Kentucky

Names of Respondents

A.G. Edwards & Sons, Inc. and
Byron Lee Holley

NATURE OF DISPUTE

Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

John D. Carter, Jerry W. Munday, and Stephen A. Smith, hereinafter collectively referred to "Claimants," were represented by Stephen M. McCauley, Esq., Charles C. Mihalek, P.S.C., Lexington, Kentucky.

A.G. Edwards & Sons, Inc. ("AGE") and Byron Lee Holley ("Holley"), hereinafter collectively referred to as "Respondents," were represented by Amy C. Johnson, Esq., Stoll, Keenon & Park, LLP, Lexington, Kentucky.

CASE INFORMATION

The Statement of Claim was filed on or about August 26, 2005. The Submission Agreement of Claimant, John D. Carter, was signed on or about July 24, 2005. The Submission Agreement of Claimant, Jerry W. Munday, was signed on or about July 24, 2005. The Submission Agreement of Claimant, Stephen A. Smith, was signed on or about July 26, 2005.

The Statement of Answer was filed jointly by Respondents, A.G. Edwards & Sons, Inc. and Byron Lee Holley, on or about October 19, 2005. The Submission Agreement of Respondent, A.G. Edwards & Sons, Inc., was signed on or about September 15, 2005. The Submission Agreement of Respondent, Byron Lee Holley, was signed on or about October 6, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: negligence; misrepresentations; breach of fiduciary duty; suitability; common law fraud; control person liability; breach of contract; and failure to supervise. The causes of action related to Claimants' allegation that Respondents advised them to retire early, accept a lump sum retirement payment, in lieu of receiving a pension, and then deposit all of their retirement assets into accounts at AGE. Claimants alleged that Holley invested their retirement funds in various unsuitable mutual funds that were unsuitable given their investment experience and financial goals of retirement.

Unless specifically admitted in his Answer, Respondents, A.G. Edwards & Sons, Inc. and Byron Lee Holley denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants' Statement of Claim failed to state a claim upon which relief can be granted; Claimants were aware from the outset of the risks associated with investing in securities and voluntarily assumed such risks; Claimants ratified the alleged conduct, and therefore, their claims are barred; by failing to exercise a degree of care over their affairs and investments that an ordinarily prudent investor would exercise, Claimants caused or contributed to cause the alleged damages of which Claimants complain; Respondents did not recommend securities that were unsuitable for Claimants' accounts, in light of Claimants' investment objectives; and the damages Claimants allegedly suffered were caused, if at all, by unforeseen market factors and conditions affecting the value of securities in Claimants' accounts for which Respondents are not liable or responsible.

RELIEF REQUESTED

Claimant, John D. Carter, requested an award of requested an award in the amount of:

Compensatory Damages	\$ 769,500.00
Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Costs	Unspecified
Other Monetary Relief	Unspecified

Claimant, Jerry W. Munday, requested an award in the amount of:

Compensatory Damages	\$1,132,500.00
Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Costs	Unspecified

Other Monetary Relief

Unspecified

Claimant, Stephen A. Smith, requested an award in the amount of:

Compensatory Damages	\$ 159,500.00
Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Costs	Unspecified
Other Monetary Relief	Unspecified

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.

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) Respondents, A.G. Edwards & Sons, Inc. and Byron Lee Holley, are jointly and severally liable for and shall pay to Claimant, Jerry W. Munday, the sum of \$ 57,810.00 in compensatory damages;
- 2) Respondents, A.G. Edwards & Sons, Inc. and Byron Lee Holley, are jointly and severally liable for and shall pay to Claimant, Jerry W. Munday, interest on the above-stated sum at the rate of 8% per annum from and including March 1, 2004 through and including the date of service of this Award;
- 3) Respondents, A.G. Edwards & Sons, Inc. and Byron Lee Holley, are jointly and severally liable for and shall pay to Claimant, John D. Carter, the sum of \$ 56,700.00 in compensatory damages;
- 4) Respondents, A.G. Edwards & Sons, Inc. and Byron Lee Holley, are jointly and severally liable for and shall pay to Claimant, John D. Carter, interest on the above-stated sum at the rate of 8% per annum from and including March 1, 2004 through and including the date of service of this Award;

- 5) Respondents, A.G. Edwards & Sons, Inc. and Byron Lee Holley, are jointly and severally liable for and shall pay to Claimant, Stephen A. Smith, the sum of \$ 40,740.00 in compensatory damages;
- 6) Respondents, A.G. Edwards & Sons, Inc. and Byron Lee Holley, are jointly and severally liable for and shall pay to Claimant, Stephen A. Smith, interest on the above-stated sum at the rate of 8% per annum from and including March 1, 2004 through and including the date of service of this Award;
- 7) Respondents, A.G. Edwards & Sons, Inc. and Byron Lee Holley, are jointly and severally liable for and shall pay to Claimants, Jerry W. Munday, John D. Carter, and Stephen A. Smith, post-Award interest on the above-stated sums at the rate of 12% per annum from and including the date of service of this Award through and including the date this Award is paid in full;
- 8) Respondents, A.G. Edwards & Sons, Inc. and Byron Lee Holley, are jointly and severally liable for and shall pay to Claimants, John D. Carter, Jerry W. Munday, and Stephen A. Smith, the sum of \$500.00 in costs for the reimbursement of Claimants' filing fee;
- 9) Respondents, A.G. Edwards & Sons, Inc. and Byron Lee Holley, are jointly and severally liable for and shall pay to Claimants, John D. Carter, Jerry W. Munday, and Stephen A. Smith, the sum of \$54,337.50 in attorneys' fees pursuant to KRS 292.480; and
- 10) Other than Forum Fees which are specified below, or Awarded above, the parties shall each bear their own costs and expenses incurred in this matter.

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 = \$ 500.00

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. In this matter, the member firm is A.G. Edwards & Sons, Inc.

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 hearing 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:

One (1) Pre-hearing session with the Chairperson x \$ 450.00	= \$ 450.00
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Pre-hearing conference: July 6, 2006	1 session
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One (1) Pre-hearing session with the Panel x \$ 1,200.00	= \$ 1,200.00
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Pre-hearing conference: January 17, 2006	1 session
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Ten (10) Hearing sessions with the Panel x \$ 1,200.00	= \$ 12,000.00
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Hearing Dates:	August 21, 2006	2 sessions
	August 22, 2006	2 sessions
	August 23, 2006	2 sessions
	August 24, 2006	2 sessions
	August 25, 2006	2 sessions

Total Forum Fees	= \$ 13,650.00
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The Arbitration Panel has assessed \$ 13,650.00 of the forum fees jointly and severally to A.G. Edwards & Sons, Inc. and Byron Lee Holley.

FEE SUMMARY

Claimants, John D. Carter, Jerry W. Munday and Stephen A. Smith, are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 1,800.00
<u>Refund Due Claimants</u>	= \$ 1,300.00

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

Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Forum Fees	= \$ 13,650.00
Total Fees	= \$ 13,650.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 13,650.00

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

R. Van Young, Esq. - Public Arbitrator, Presiding Chair
Robert P. Ross, Esq. - Public Arbitrator
John R. Michael, II - Non-Public Arbitrator

Concurring Arbitrators:

R. Van Young, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Robert P. Ross, Esq.
Public Arbitrator

Signature Date

Dissenting Arbitrator:

John R. Michael, II
Non-Public Arbitrator

Signature Date

10/2/2010
Date of Service (NASD use only)

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

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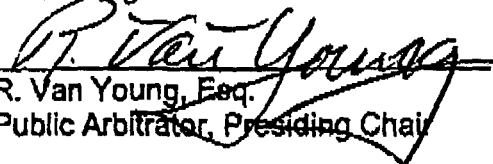
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Public Arbitrator, Presiding Chair

2-10-06
Signature Date

Robert P. Ross, Esq.
Public Arbitrator

Signature Date

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Non-Public Arbitrator

Signature Date

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R. Van Young, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Robert P. Ross, Esq.
Public Arbitrator

9/27/06

Signature Date

Dissenting Arbitrator:

John R. Michael, II
Non-Public Arbitrator

Signature Date

10/2/2006

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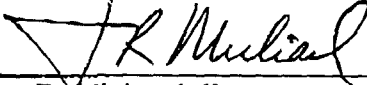
R. Van Young, Esq.
Public Arbitrator, Presiding Chair

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Public Arbitrator

Signature Date

Dissenting Arbitrator:



John R. Michael, II
Non-Public Arbitrator

9-27-06

Signature Date

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