

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant

Francis S. Happe

vs.

Case Number: 05-05847  
Hearing Site: St. Louis, Missouri

Name of Respondent

A.G. Edwards & Sons, Inc. and  
Charles Trankler

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**NATURE OF THE DISPUTE**

Customer vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

Francis S. Happe ("Claimant") was represented by Bruce D. Oakes, Esq., Oakes & Fosher, LLC, St. Louis, Missouri.

A.G. Edwards & Sons, Inc. ("Edwards") and Charles Trankler ("Trankler"), hereinafter collectively referred to as "Respondents," were represented by James C. Browning, Jr., Esq. A.G. Edwards & Sons, Inc., St. Louis, Missouri.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 15, 2005. The Submission Agreement of Claimant was signed on or about November 14, 2005.

The Motion to Dismiss and Answer was filed jointly by Respondents on or about January 9, 2006. The Submission Agreement of Respondent A.G. Edwards & Sons, Inc. was signed on or about January 9, 2006 by Stephen G. Sneeringer, Sr. Vice President and Counsel. The Submission Agreement of Respondent Trankler was signed on or about January 30, 2006.

Claimant's Response to Respondents' Motion to Dismiss was filed on or about April 6, 2006.

Claimant's Notice of Dismissal with Prejudice of Charles Trankler was filed on or about December 8, 2006.

The Joint Motion for Entry of Stipulated Award filed by the parties on or about December 18, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; violation of Federal Securities laws and Missouri's Securities Act §409.5-501 RSMo *et seq.*; common law fraud; negligence/negligent misrepresentation/omission; and negligent supervision. The causes of action related to the recommendation and purchase of various unspecified securities, which Claimant believed to be speculative and/or volatile and unsuitable to Claimant's investment needs and objectives.

Unless specifically admitted in its Answer, Respondents Edwards and Trankler denied the allegations made in the Statement of Claim and asserted, *inter alia*, the following defenses: Claimant failed to state a claim upon which relief can be granted; Claimant's claims are barred by applicable statutes of limitation; Claimant's alleged damages, if any, were caused by the acts or omissions of third parties over which Respondents had no control; Respondents did not know, and in the exercise of reasonable care, could not have known of the existence of the facts upon which Claimant bases claims of liability and, therefore Claimant's claims are barred; Claimant expressly and implicitly represented to Respondents that Claimant understood and accepted the nature and risks of the securities purchased from Respondents; Respondents, in discharging their duties, acted in good faith and exercised the degree of care, diligence, and skill which a prudent person would exercise in similar circumstances and like positions; Claimant's claims are barred because he failed to mitigate his damages; Claimant's claims are barred because he suffered no damages by reason of the acts complained of in the Statement of Claim; Claimant's alleged damages, if any, were proximately caused by his own conduct; and Claimant's damages cannot be attributed to any statements made by Respondents, but are due instead to extraneous market conditions over which Respondents have no control.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$148,000.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested dismissal of Claimant's claims with prejudice and an award for costs and expenses for defending the claim.

### **OTHER ISSUES CONSIDERED & DECIDED**

On May 23, 2006, the Panel heard oral arguments regarding Respondents' Motion to Dismiss. After considering the arguments and pleading filed by the parties, the Panel entered an Order denying Respondents' Motion to Dismiss on or about May 23, 2006.

On December 8, 2006, Claimant notified NASD Dispute Resolution that he was dismissing, with prejudice, all claims against Mr. Trankler.

On December 11, 2006, Claimant notified NASD Dispute Resolution that he had entered into a settlement agreement and was dismissing all charges filed by him against Respondents Edwards and Trankler. Claimant further apprised NASD Dispute Resolution that the hearing scheduled for December 18-21, 2006 could be cancelled.

On December 18, 2006, Claimant and Respondents Edwards and Trankler, by and through their counsel, agreed to the terms of this Stipulated Award wherein Respondents Edwards and Trankler requested that the Panel enter an Order expunging all references to this case from the Central Registration Depository ("CRD") record of Charles Trankler.

The Panel agree that:

The facts in this case would support the requisite finding for expungement for Mr. Trankler's CRD record under NASD Rule 2130, and in so finding, acknowledge that Claimant does not object to the Panel granting expungement under this rule.

In light of the evidence proving:

- A. The dates of Claimant's investments (thereby demonstrating that Claimant's claims are beyond the applicable statutes of limitation);
- B. Claimant's net worth, investment objective of growth, knowledge, prior investment experience, risk tolerance, investment horizon prior to retirement, and investment according to Respondents' asset allocation guidelines (thereby refuting arguments of suitability);
- C. That Claimant understood he was hiring third-party managers to handle his accounts on a fee-based, discretionary basis and that Edwards and Mr. Trankler were not responsible for his accounts' performance (thereby undercutting arguments of unauthorized trades, churning, and responsibility for market declines);
- D. The express reviews of Claimant's account performance and

recommendations for changes in investments (thereby refuting arguments of misrepresentation and omission of facts);

E. That Mr. Trankler did not act in bad faith, engage in self-dealing, or fail to put Claimant's interests above his own; and

F. That Mr. Trankler acted diligently in handling Claimant's accounts.

The Panel finds that the claim, allegation or information against Respondent, Charles Trankler, is factually impossible or clearly erroneous and therefore, finds Respondents' request for expungement suitable and appropriate.

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 and the parties' submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents Edwards and Trankler have been withdrawn and dismissed with prejudice. Accordingly, the Panel hereby enters this Award affirming the dismissal of all said claims with prejudice.
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent, Charles Trankler's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent, Charles Trankler, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information against Mr. Trankler is factually impossible or clearly erroneous;

3. Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice; and
4. All remaining NASD fees, including fees associated with the cost of expungement of

Mr. Trankler's record, will be borne by Respondent Edwards.

### **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 = \$ 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 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 = \$ 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 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 lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,125.00 = \$ 2,250.00

Pre-hearing conferences: March 13, 2006 1 session  
May 23, 2006 1 session

One (1) Hearing session x \$1,125.00 = \$ 1,125.00

Hearing Date: December 18, 2006 1 session

Total Forum Fees = \$ 3,375.00

The Panel has assessed \$3,375.00 of the forum fees to A.G. Edwards & Sons, Inc.

### **FEE SUMMARY**

Claimant, Francis S. Happe, is liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00

Less payments	= \$ 1,425.00
Refund Due Claimant	= \$ 1,125.00

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

Member Fees	= \$ 5,200.00
Forum Fee	= \$ 3,375.00
Total Fees	= \$ 8,575.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 4,125.00

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

**ARBITRATION PANEL**

Bruce S. Feldacker, Esq. - Public Arbitrator, Presiding Chair  
John Bruce Witwer - Public Arbitrator  
M. Eileen Dorsey, CFP - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

\_\_\_\_\_  
Bruce S. Feldacker, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

\_\_\_\_\_  
John Bruce Witwer  
Public Arbitrator

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

\_\_\_\_\_  
M. Eileen Dorsey, CFP  
Non-Public Arbitrator

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

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

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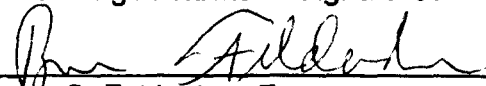
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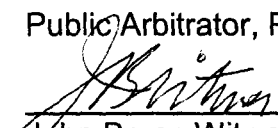
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1-3-07  
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