

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant

Albert L. Walters

vs.

Case Number: 06-00546  
Hearing Site: Kansas City, Missouri

Names of Respondents

Jo Colombo, Douglas Royle, and Brian T. Wall

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**NATURE OF THE DISPUTE**

Customer vs. Associated Persons

**REPRESENTATION OF PARTIES**

Albert L. Walters ("Claimant") appeared pro se.

Jo Colombo ("Colombo"), Douglas Royle ("Royle"), and Brian T. Wall ("Wall"), hereinafter collectively referred to as "Respondents," were represented by Brent J. Burtin, Esq., A.G. Edwards & Sons, Inc., St. Louis, Missouri.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 3, 2006. The Submission Agreement of Claimant Walters was signed on or about January 3, 2006.

The Statement of Answer and Motion to Dismiss was filed jointly by Respondents, Colombo, Royle, and Wall, on or about June 15, 2006. The Submission Agreement of Respondent Colombo was signed on or about May 16, 2006. The Submission Agreement of Respondent Royle was signed on or about May 18, 2006. The Submission Agreement of Respondent Wall was signed on or about May 22, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, failure to execute, negligence, and errors. The causes of action related to a PFL Life Insurance Annuity held with A.G. Edwards & Sons, Inc. ("Edwards"). At the annuity's maturity date of December 30, 2004, Claimant alleged that he instructed Respondent Royle to convert it to a cash position in order to direct it away from any market variances, then to move the funds

to a variable annuity with The Hartford. Claimant asserted that because of Royle's failure to follow his direction, changes in the market during the interim depleted the value of his account.

Unless specifically admitted in their Answer, Respondents, Colombo, Royle, and Wall, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted because there is no legal basis set out for any recovery; as a result of Claimant's failure to notify Edwards of the alleged acts and omissions of which Claimant now complains promptly after the receipt of written confirmations, monthly statements, and other documents evidencing or setting forth transactions in its account and in any event promptly after Claimant discovered, or reasonably should have discovered the alleged acts or omissions, Claimant is barred from recovering from Edwards under the doctrines of ratification, account stated, estoppel, waiver, and laches because Edwards relied on Claimant's silence; Claimant was aware from the outset of the risk of loss associated with investing in securities and voluntarily assumed such risk; Claimant's knowing and voluntary assumption of such risk was the sole and proximate cause of any alleged damages; Claimant has ratified the alleged conduct about which he now complains; as a result of Claimant's failure to object or notify Edwards of the acts and omissions of which Claimant complained within ten (10) days of receipt of written confirmations, account statements and other documents evidencing or setting forth the transactions in Claimant's account, Claimant is barred from recovering from Edwards under the Customer Agreement and under Section 8-319 of the Uniform Commercial Code as enacted in the State of Missouri; Claimant has asserted no statutory or legal basis for the award of attorneys' fees or punitive damages in this case, therefore, no factual basis exists for awarding such damages; the damages Claimant allegedly suffered were caused, if at all, by unforeseen market factors and conditions affecting the value of securities in Claimant's accounts for which Edwards is not liable or responsible; Claimant has alleged no activity or specific conduct that resulted in a breach of fiduciary duty by Edwards; and any claims based upon a breach of fiduciary duty should be dismissed.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$ 6,443.60
Exemplary/Punitive Damages	\$25,000.00
Other Costs	Unspecified

Respondents requested that the claims asserted against them be denied and dismissed in their entirety.

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

During the Initial Pre-hearing Conference held on August 14, 2006, the Arbitrator heard arguments on Respondents' Motion to Dismiss. The Arbitrator granted Respondents' motion in part, and dismissed Respondent, Jo Colombo, from this matter.

During the final hearing, Respondents, Royle and Wall, requested an expungement of all references of this arbitration from Douglas S. Royle's and Brian T. Wall's records maintained by the NASD Central Registration Depository ("CRD").

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 Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) The request for expungement by Respondents, Douglas S. Royle and Brian T. Wall, is granted.

The Arbitrator recommends the expungement of all references to the above captioned arbitration from Respondent, Douglas S. Royle's and Brian T. Wall's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondents, Royle and Wall, 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 Arbitrator has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous;

- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages is hereby denied with prejudice.

### **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 = \$ 175.00

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

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,000.00

#### **Forum Fees and Assessments**

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

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: August 14, 2006 1 session	
One (1) Hearing session x \$450.00	= \$ 450.00
Hearing Date: January 9, 2007 1 session	
Total Forum Fees	= \$ 900.00

The Arbitrator has assessed \$450.00 of the forum fees to Albert L. Walters.

The Arbitrator has assessed \$225.00 of the forum fees to Douglas S. Royle.

The Arbitrator has assessed \$225.00 of the forum fees to Brian T. Wall.

**FEE SUMMARY**

Claimant, Albert L. Walters, is liable for:

Initial Filing Fee	= \$	175.00
Forum Fees	= \$	450.00
Total Fees	= \$	625.00
Less payments	= \$	625.00
Balance Due NASD Dispute Resolution	= \$	0.00

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

Member Fees	= \$	2,625.00
Total Fees	= \$	2,625.00
Less payments	= \$	2,350.00
Balance Due NASD Dispute Resolution	= \$	275.00

Respondent, Douglas S. Royle, is liable for:

Forum Fees	= \$	225.00
Total Fees	= \$	225.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	225.00

Respondent, Brian T. Wall, is liable for:

Forum Fees	= \$	225.00
Total Fees	= \$	225.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	225.00

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

**ARBITRATOR**

Bill J. Alexander - Public Arbitrator, Presiding Chair

Concurring Arbitrators' Signature:

/s/ Bill J. Alexander  
Bill J. Alexander  
Public Arbitrator, Presiding Chair

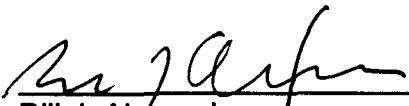
1/22/07  
Signature Date

1/24/07  
Date of Service (For NASD office use only)

**ARBITRATOR**

Bill J. Alexander - Public Arbitrator, Presiding Chair

Concurring Arbitrators' Signature:

  
\_\_\_\_\_  
Bill J. Alexander  
Public Arbitrator, Presiding Chair

22 JAN 07  
Signature Date

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Date of Service (For NASD office use only)