
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Roberta S. Fowler

Case Number: 06-00686

Names of the Respondents

A.G. Edwards & Sons, Inc.

Frederick J. Barton

Hearing Site: Atlanta, Georgia

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

REPRESENTATION OF PARTIES

For Roberta S. Fowler, hereinafter referred to as "Claimant": Theodore E.G. Pound, Esq. and Natalie Woodward, Esq., Mayfield, Commander & Pound, LLC, Atlanta, Georgia.

For A.G. Edwards & Sons, Inc. ("Edwards"): Jeffrey W. Coverdell, Litigation Counsel, Edwards, St. Louis, Missouri.

Respondent Frederick J. Barton ("Barton") appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: February 9, 2006.

Claimant signed the Uniform Submission Agreement: February 9, 2006.

Statement of Answer filed by Respondent Edwards on or about: April 6, 2006.

Statement of Answer filed by Respondent Barton on or about: April 6, 2006.

Respondent Edwards signed the Uniform Submission Agreement: April 6, 2006.

Respondent Barton signed the Uniform Submission Agreement: April 5, 2006.

Respondent A.G. Edwards' Motion to Dismiss Claimant's Allegations Against A.G. Edwards filed on or about: September 22, 2006.

Claimant's Trial Brief and Response to the Motion to Dismiss of Respondent A.G. Edwards & Sons, Inc. filed on or about: October 9, 2006.

Respondent A.G. Edwards' Trial Brief and Reply to Claimant's Response to Motion to Dismiss filed on or about: October 23, 2006.

Claimant's Post-Hearing Submission filed on or about: November 6, 2006.

Respondent Edwards' Post-Hearing Submission filed on or about: November 6, 2006.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; negligence; fraud and conversion; violations of U.S.C. Section 78(h); violations of Georgia and Missouri Blue Sky Laws;

violations of NASD Rules; breach of contract; respondeat superior; and, bad faith and attorneys' fees. The causes of action relate to loans or investments obtained by Respondent Barton from Claimant.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested an award of compensatory damages, pre- and post-judgment interest, punitive damages in an amount in excess of \$1,000,000.00, reasonable costs and attorneys' fees against Respondents jointly and severally, actual damages of no less than \$925,000.00, that all costs of arbitration be taxed against Respondents, and that Claimant have such other and further relief as the arbitrators find reasonable and appropriate under the evidence and applicable law.

Respondent Edwards requested that judgment be entered on behalf of Respondent Edwards and against Claimant on the causes of action alleged in the Statement of Claim; that all costs and expenses of this arbitration proceeding, including, but not limited to, forum fees and Respondent Edwards' reasonable costs and expenses incurred in defending this matter, be taxed against Claimant; and, for such further relief as the arbitration panel deemed appropriate.

Respondent Barton requested that the claim for relief be denied.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Edwards filed a Motion to Dismiss which asserted that Respondent Edwards was not aware of the activity alleged in the Statement of Claim; any such activity was outside the scope of Respondent Barton's employment; and, any claims which Claimant now seeks to raise concern Respondent Barton. In response, Claimant asserted that under NASD Rules, Georgia law and general legal principles, there are four separate and independent legal grounds on which Edwards is liable for the full amount: negligent supervision; respondeat superior; apparent or ostensible agency and agency by estoppel; and, ratification. The Panel heard the motion to dismiss at the evidentiary hearing and granted the motion in part as to negligence claims preceding more than four years prior to the filing date of the Statement of Claim.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Edwards is found liable on the claim of respondeat superior and Respondent

Barton is found liable on the claims of breach of fiduciary duty and fraud. Respondents Edwards and Barton are jointly and severally liable and shall pay to Claimant compensatory damages in the amount of \$420,000.00, plus interest at the rate of 6% per annum which shall accrue from September 14, 2004 until the date the Award is paid in full.

2. Respondent Barton is solely liable and shall pay to Claimant additional compensatory damages in the amount of \$450,000.00, plus interest at the rate of 6% per annum which shall accrue from September 14, 2004 until the date the Award is paid in full.
3. Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 500.00
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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. Accordingly, Respondent Edwards is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were incurred in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator

honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: August 11, 2006 1 session	

One (1) Pre-hearing session with the Panel @ \$1,200 .00	= \$1,200.00
Pre-hearing conference: June 12, 2006 1 session	

Five (5) Hearing sessions with the Panel @ \$1,200.00	= \$6,000.00
Hearing Dates: October 31, 2006 2 sessions	
November 1, 2006 2 sessions	
November 2, 2006 1 session	

Total Forum Fees	= \$7,650.00
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The Panel has assessed the total forum fees in the amount of \$7,650.00 jointly and severally to Respondents Edwards and Barton.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
<u>Less payments</u>	<u>= \$ 500.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Edwards is solely liable for:

Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>

Balance Due NASD Dispute Resolution = \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 7,650.00
Total Fees	= \$ 7,650.00
Less payments	= 0.00
Balance Due NASD Dispute Resolution	= \$ 7,650.00

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

ARBITRATION PANEL

<i>Lewis Vastine Stabler, Jr., Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>John W. Davis, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Chesley V. Morton, Jr.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Lewis Vastine Stabler, Jr., Esq.
Public Arbitrator, Presiding Chairperson

December 1, 2006
Signature Date

/s/
John W. Davis, Esq.
Public Arbitrator

December 1, 2006
Signature Date

Concurring in Part, Dissenting in Part Arbitrator's Signature

Arbitrator Morton dissents as to the award rendered against
Respondent Edwards and concurs with the remainder of the award.

/s/
Chesley V. Morton, Jr.
Non-Public Arbitrator

November 30, 2006
Signature Date

December 1, 2006
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
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Balance Due NASD Dispute Resolution = \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 7,650.00
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Less payments	= 0.00
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ARBITRATION PANEL

Lewis Vastine Stabler, Jr., Esq.
John W. Davis, Esq.
Chesley V. Morton, Jr.


-
-
-

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



Lewis Vastine Stabler, Jr., Esq.
Public Arbitrator, Presiding Chairperson



Signature Date

John W. Davis, Esq.
Public Arbitrator

Signature Date

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NASD Dispute Resolution
Arbitration No. 06-00686
Award Page 5

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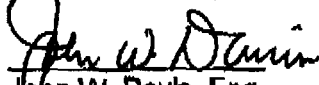
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John W. Davis, Esq.	-	Public Arbitrator
Chesley V. Morton, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Lewis Vestine Stabler, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


John W. Davis, Esq.
Public Arbitrator

12-1-06
Signature Date

Concurring in Part, Dissenting in Part Arbitrator's Signature

Arbitrator Morton dissents as to the award rendered against
Respondent Edwards and concurs with the remainder of the award.

Chesley V. Morton, Jr.
Non-Public Arbitrator

Signature Date

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Less payments	= 0.00
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ARBITRATION PANEL

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John W. Davis, Esq.	-	Public Arbitrator
Chesley V. Morton, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Lewis Vastine Stabler, Jr., Esq.
Public Arbitrator, Presiding Chairperson

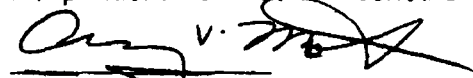
Signature Date

John W. Davis, Esq.
Public Arbitrator

Signature Date

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Chesley V. Morton, Jr.
Non-Public Arbitrator

Signature Date

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