

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

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In the Matter of the Arbitration Between:

Name of Claimant

Julie Ellen Simmons- Capuder

vs.

Case Number: 06-01684

Hearing Site: Charleston, West Virginia

Name of Respondent

A.G. Edwards & Sons, Inc.

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**NATURE OF THE DISPUTE**

Associated Person vs. Member

**REPRESENTATION OF PARTIES**

Julie Ellen Simmons-Capuder ("Simmons-Capuder" or "Claimant") appeared pro se.

A.G. Edwards & Sons, Inc. ("Edwards" or "Respondent") was represented by Nuviah Shirazi, Esq., A.G. Edwards & Sons, Inc., St. Louis, Missouri.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 30, 2006. The Submission Agreement of Simmons-Capuder was signed on or about March 29, 2006.

The Statement of Answer was filed by Edwards on or about May 24, 2006. The Submission Agreement of Edwards was signed on or about May 24, 2006 by Clay Grumke, Vice-President and Counsel.

A Motion to Preclude Respondent's Reported Motion to Dismiss was filed by Claimant on December 7, 2006.

A Response to Claimant's Motion to Preclude Respondent's Affirmative Defenses Dismissing the Pending Matter was filed by Respondent on December 12, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: libel and slander on Claimant's Form U-5; wrongful termination; defamation; and breach of contract. The causes of action related

to the alleged wrongful termination of Claimant; Claimant alleged that Respondent reported false and defamatory remarks on Claimant's Form U-5; and Respondent failed to comply with the parties' Mutual Release Agreement, wherein Respondent agreed to file an amended Form U-5 regarding Claimant's termination.

Unless specifically admitted in its Answer, Respondent Edwards denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claims are barred by the applicable statutes of limitations; Claimant is not entitled to punitive damages or attorneys' fees as a matter of fact and such claim is barred by operation of the provisions of KRS 411.184 and 411.186; Claimant's claims are barred by operation of the doctrines of res judicata, collateral estoppel, laches, satisfaction and accord, or waiver; the Statement of Claim failed to state a cause of action upon which relief can be granted; and Claimant's claims are barred by virtue of the valid and enforceable Mutual Release and settlement agreement.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	Unspecified
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	\$70,000.00
Other Costs	Unspecified
Other Non-Monetary Relief	Formal apology; retract false statements; and disciplinary action against A.G. Edwards & Sons, Inc.
Expungement	Amend the Form U-5 for reason of termination

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

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

Pursuant to Claimant's Motion to Preclude Respondent's Reported Motion to Dismiss filed on December 7, 2006, the Panel issued an Order dated December 14, 2006, which granted Claimant's request to deny Respondent's Motion to Dismiss *before* the hearing, but denied Claimant's request to deny Respondent's Motion to Dismiss *during* the hearing.

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 Panel 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 Panel finds no evidence of breach of contract or fraud. Further, although the Boyd County Court held the Mutual Release to be a valid contract, the Panel believes that a significant portion of the original intent of this contract has never been fulfilled because Simmons-Capuder's Form U-5 continues to contain the language, which caused this hearing in the first place. The Panel indicates "intent" because both parties clearly **intended** the language to be changed, as witnessed by their execution of the Mutual Release.

In attempting to effect this change, Edwards, in apparent good faith, employed a stratagem, which they had used before to good effect even though they should have known it was contrary to NASD policy. Simmons-Capuder and her attorney had a copy of the Form U-5 and clearly had the opportunity to read the language on it, which precluded such a change. Neither party had an advantage over the other. This being the case, the **intent** of the contract could not be effected at the time of its signing.

The Panel recommends the expungement of the termination comment, "Inappropriate office behavior; no securities violations" contained in Section 3 of the Form U-5 of Julie Ellen Simmons-Capuder's registration records maintained by the NASD Central Registration Depository ("CRD") based on the defamatory nature of the information. The Panel recommends that the termination comment be changed to "Personality difference eligible for rehire; in good standing with Edwards, no securities violations;

- 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 and attorneys' fees, 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 = \$ 250.00

#### **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	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,200.00

#### **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, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,000.00	= \$ 1,000.00
Pre-hearing conference: September 8, 2006	1 session
Six (6) Hearing sessions x \$1,000.00	= \$ 6,000.00
Hearing Dates: December 18, 2006	3 sessions
December 19, 2006	2 sessions
January 3, 2007	1 session
Total Forum Fees	= \$ 7,000.00

The Panel has assessed \$3,500.00 of the forum fees to Julie Ellen Simmons-Capuder.

The Panel has assessed \$3,500.00 of the forum fees to A.G. Edwards & Sons, Inc.

### **FEE SUMMARY**

Claimant, Julie Ellen Simmons-Capuder, is liable for:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 3,500.00
<u>Total Fees</u>	<u>= \$ 3,750.00</u>
<u>Less payments</u>	<u>= \$ 1,250.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,500.00

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

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 3,500.00
<u>Total Fees</u>	<u>= \$ 7,950.00</u>
<u>Less payments</u>	<u>= \$ 4,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,500.00

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

### **ARBITRATION PANEL**

Alex H. Keller - Public Arbitrator, Presiding Chair  
Harry Carl Taylor, II, Esq. - Public Arbitrator  
John G. Byrd, CPA - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Alex H. Keller  
Alex H. Keller  
Public Arbitrator, Presiding Chair

1/23/07  
Signature Date

/s/ Harry Carl Taylor, II, Esq.  
Harry Carl Taylor, II, Esq.  
Public Arbitrator

1/18/07  
Signature Date

/s/ John G. Byrd, CPA  
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Date of Service (For NASD office use only)

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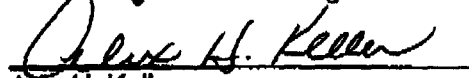
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Public Arbitrator, Presiding Chair

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Signature Date

Harry Carl Taylor, II  
Harry Carl Taylor, II, Esq.  
Public Arbitrator

January 18, 2007  
Signature Date

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John G. Byrd, CPA  
Non-Public Arbitrator

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

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