

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant(s)

Ronald G. Sheppard

89-00163

Name of Respondent(s)

A.G. Edwards & Sons, Inc.  
and Timothy L. Colen

---

**CASE SUMMARY**

In a claim filed with the NASD on or about January 17, 1989 Ronald G. Sheppard ("Claimant") alleged that A.G. Edwards and Sons, Inc. and Timothy L. Colen (collectively "Respondents") misrepresented the status of an account held by Claimant with the Respondents; invested in securities which were not suitable for Claimant in light of Claimant's investment objectives; exercised unilateral control over Claimant's investments in a discretionary manner, without compliance with proper procedures for a discretionary account; acted negligently, recklessly and/or intentionally and breached the duty of good faith and fair dealing toward the Claimant resulting in a violation of the Federal and State Securities laws. Claimant also asserts that A.G. Edwards is responsible for the actions of Timothy L. Colen as Colen's supervisor and employer, and is liable on the theories of vicarious liability and respondeat superior.

Respondents, in answers filed with the NASD, denied all allegations of wrongful conduct with regard to Claimant's account and asserted that: 1) Claimant failed to mitigate damages; 2) Claimant failed to exercise the degree of care over his investments which an ordinarily prudent investor would have; 3) Respondents acted in good faith and did not induce the acts constituting violations of the securities laws; 4) Claimant failed to object or notify Respondents of the wrongful acts of which Claimant complains; 5) Claimant was aware of the risks associated with investing in securities and voluntarily assumed such risks; 6) the damages suffered by Claimant were caused by market factors; 7) Claimant is barred from recovery under the doctrines of ratification, account stated, estoppel, waiver and laches;

8) Claimant is not entitled to the relief requested due to the lack of a statutory basis or contractual basis on which to recover such relief. Respondents also assert a counterclaim for payment to A.G. Edwards and Sons, Inc. of any expense including attorneys fees as contained in A.G. Edwards and Sons, Inc. Commodities Customer's Agreement.

In Claimant's answer to Respondents' counterclaim, Claimant denies liability for payment of Respondents' expense and attorney's fees.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$30,000.00 plus interest from the date of the loss, less \$2,700 which was recovered upon the closing of the account. Claimant also requested treble damages, interest, reasonable attorney's fees and punitive damages.

Respondent A.G. Edwards requested damages including payment of expenses and attorney's fees.

#### AWARD

On October 11, 1990 in Indianapolis, Indiana during a hearing lasting a total of three sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on December 19, 1988 by Claimant Ronald G. Sheppard, on May 23, 1989 by Brian C. Underwood on behalf of Respondent A.G. Edwards and Sons, Inc., and on October 11, 1990 by Respondent Timothy L. Colen.

The parties have agreed to the procedure which allows the arbitrator to execute a handwritten copy of this award and to receive a typed conformed copy of this award.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent A.G. Edwards and Sons, Inc. and Timothy L. Colen are liable, jointly and severally, and shall pay to Claimant damages in the amount of Ten Thousand Eight Hundred Eighty Nine Dollars (\$10,889.00).

2. Respondents A.G. Edwards and Sons, Inc. and Timothy L. Colen are liable, jointly and severally, and shall pay to Claimant attorney's fees the amount of Seven Thousand One Hundred Ninety Four Dollars (\$7,194.00) pursuant to Ind. Code Sections 35-43 et seq. as cited in the Statement of Claim.

3. All parties shall bear their own expenses and costs.

4. There is no award of interest.

5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the hearing session deposit in the amount of \$500.00 previously deposited with the NAF by the Claimant and the Respondents, jointly and severally, are assessed a \$500.00 filing fee and \$1500.00 in forum fees.

By the Panel

Dated:	October 11, 1990	/S/ John G. Deckard, Esq.
Dated:	October 11, 1990	/S/ E. Lou Jones
Dated:	October 11, 1990	/S/ Robert H. Springer