

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joseph C. Copeland  
Kathleen M. Copeland and  
Annie Copeland

90-00160

Name of Respondents

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

REPRESENTATION

Claimants were represented by B. Keith Shale, Esq. of Henderson, Daily, Withrow & DeVoe, Indianapolis, IN.

Respondent A. G. Edwards & Sons, Inc. was represented by William S. Port, Esq. of A. G. Edwards & Sons, Inc., St. Louis, MO.

Respondent Timothy L. Colen appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on or about January 15, 1990.

Claimants' Submission Agreement signed on January 11, 1990 by Joseph C. Copeland, Kathleen M. Copeland and Annie M. Copeland.

Joint Statement of Answer filed by Respondents A. G. Edwards & Sons, Inc. and Timothy L. Colen, on or about March 26, 1990.

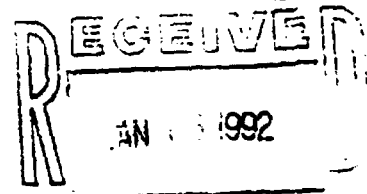
Respondent A. G. Edwards & Sons, Inc.'s Submission Agreement signed on March 23, 1990 by Stephen G. Sneeringer.

Respondent Timothy L. Colen's Submission Agreement signed on March 16, 1990.

Amended Answer, Affirmative Defenses and Counterclaim of Respondent Timothy L. Colen filed on or about July 31, 1991.

HEARING INFORMATION

The hearing was held on Wednesday, December 4, 1991 and Thursday, December 5, 1991 in Indianapolis, Indiana for a total of four (4) sessions.



### CASE SUMMARY

Claimants alleged that Respondent Timothy L. Colen ("Colen") a registered representative employed by Respondent A. G. Edwards & Sons, Inc. ("Edwards") engaged in unsuitable and unauthorized transactions in their accounts. Specifically, Claimants alleged that there were unauthorized sales of Conseco stock. Claimants further alleged that the Respondents failed to execute an order to liquidate the accounts, engaged in trading on margin despite specific instructions not to, and engaged in option trading contrary to the Claimants' instructions. Claimants specifically alleged that their stated investment objectives were very conservative and that they would trade a limited number of over the counter stocks and other non-speculative stocks. Claimants also stated that they sent a letter ordering the liquidation of their accounts to Colen and Edwards on September 18, 1987.

Respondent Edwards denied the allegations set forth against it. Respondent Edwards further stated that all transactions in the accounts of the Claimants were made with the knowledge and authorization of the Claimants. The following affirmative defenses were asserted by Edwards: Failure to mitigate, contributory negligence ratification, assumption of the risk, estoppel, laches and waiver.

Respondent Colen denied that he engaged in unauthorized transactions in the Claimants' accounts, and the other allegations asserted against him. Colen specifically stated that all transactions in the Claimants' account were discussed with the Claimants prior to their execution. Colen also denied having received the September 18, 1987 letter ordering the liquidation of the accounts.

### RELIEF REQUESTED

Claimants requested an award in the amount of approximately \$122,000.78 in compensatory damages for the accounts of Joseph C. Copeland and Kathleen M. Copeland, approximately \$26,845.93 for the account of Annie Copeland, interest and reasonable attorney's fees.

Respondent Edwards requested that the Statement of Claim be dismissed in their entirety and that it be awarded reasonable attorney's fees.

Respondent Colen requested that the Claims be dismissed and that he be awarded his costs and attorney's fees.

### OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD.

### AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents A.G. Edwards & Sons, Inc. and Timothy Colen shall be and hereby are jointly and severally liable for and shall pay to the Claimants Joseph and Kathleen Copeland the sum of \$10,000.00 (Ten Thousand Dollars) specifically for the unauthorized sale of the Conseco stock.
2. All other claims asserted herein by the Claimants shall be and hereby are dismissed in their entirety.
3. Respondents A.G. Edwards & Sons, Inc. and Timothy Colen shall be and hereby are jointly and severally liable for and shall pay to the Claimant the sum of \$17,475.76 (Seventeen Thousand Four Hundred Seventy Five Dollars and Seventy Six Cents) as attorney's fees. In making this award of attorney's fees, the panel has considered the law of the State of Indiana and the caselaw submitted by the parties.
4. The Counterclaims asserted herein shall be and hereby are dismissed in their entirety.
5. Each party shall bear its own costs, expenses and attorney's fees not specifically enumerated herein.

### FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain the hearing session deposit in the amount of \$550.00 previously deposited with the NASD on behalf of the Claimants. In addition the following forum fees are assessed:

Respondents A.G. Edwards & Sons, Inc. and Timothy Colen shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$2,450.00 as forum fees.

Forum fees are calculated at 4 sessions at \$750.00 for each regular hearing session.

Respondents A.G. Edwards & Sons, Inc. and Timothy Colen shall be and hereby are jointly and severally liable for and shall pay to the Claimants the sum of \$550.00 as reimbursement of the hearing session deposit.

Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

1-14-92

Joseph L. Claypool, Esq.  
Presiding Chair  
Public Arbitrator

George W. Harding  
George W. Harding  
Public Arbitrator

Jack A. Wodock  
Industry Arbitrator

Respondents A.G. Richards & Sons, Inc. and Timothy Colen shall be and hereby are jointly and severally liable for and shall pay to the Claimants the sum of \$550.00 as reimbursement of the hearing session deposit.

Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

1/21/92

Joseph L. Claydon, Esq.  
Presiding Chair  
Public Arbitrator

George W. Harding  
Public Arbitrator

Jack A. Wodock  
Industry Arbitrator

Respondents A.G. Edwards & Sons, Inc. and Timothy Colen shall be and hereby are jointly and severally liable for and shall pay to the Claimants the sum of \$550.00 as reimbursement of the hearing session deposit.

Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

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Joseph L. Claypool, Esq.  
Presiding Chair  
Public Arbitrator

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George W. Harding  
Public Arbitrator

1-13-92

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Jack A. Wodock  
Industry Arbitrator