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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

PUBLIC

A.G. Edwards & Sons, Inc.

92-01170

Name of Respondent(s)

James Shelton Long

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**REPRESENTATION**

For Claimant A.G. Edwards & Sons, Inc.: Michael Gates, Esq., in-house counsel  
at A.G. Edwards & Sons, Inc., St. Louis, Missouri.

For Respondent James Shelton Long: John B. Finch, Esq., sole practitioner,  
Raleigh, NC.

**CASE INFORMATION**

Statement of Claim filed: March 26, 1992.

Claimant's Submission Agreement signed on: March 26, 1992.

Amended Statement of Claim and Reply to Counterclaim filed on: September 2,  
1992.

Statement of Answer and Counterclaim filed by Respondent on: July 17, 1992.

Respondent's Submission Agreement signed on: July 16, 1992.

**HEARING INFORMATION**

Hearing Date/Session: August 24, 1993 / Two Sessions

Hearing Location: Sheraton Inn in Raleigh, North Carolina.

### CASE SUMMARY

Claimant alleged that on November 29, 1990 Respondent Long instructed Graydon Fox, an investment broker at Respondent Edwards' branch office in Burlington, NC, to purchase 4,000 shares of Compuchem Corp. in Respondent's margin account at a cost of \$15,883.84, with a settlement or due date for payment of the purchase of December 6, 1990. Claimant further alleged that on December 5, 1990 Respondent instructed Mr. Fox to purchase an additional 12,000 shares of Compuchem Corp. in Respondent's margin account for \$50,400.00 with a settlement date of December 12, 1990. Claimant contended that on December 7, 1990 Respondent went to Claimant's office to pay Mr. Fox for his November 29 purchase and tendered a check of \$8,441.00, whereby, Mr. Fox advised Respondent that the settlement date for the 12,000 shares was December 12, 1990. Claimant further contended that Respondent advised Mr. Fox that he would not have funds available to pay for the December 5 purchase until December 17, 1990. Claimant alleged that on December 13, 1990 Respondent instructed Mr. Fox to sell all his Compuchem Corp. shares at \$4/share, whereby, Mr. Fox informed Respondent that the current bid price for Compuchem was \$3-7/8 and it might be very difficult to sell the shares at \$4/share and later Mr. Fox was unable to find a purchaser willing to pay \$4/share. Claimant alleged that on December 14, 1990 Respondent contacted Mr. Fox accusing him of depressing the price of Compuchem Corp. by not selling the stock at \$4 a share, whereby, Mr. Fox informed Respondent that Claimant had not done anything to alter the bid price for the stock and that Respondent was liable to Claimant for payment of December 5, 1990 purchase. Claimant contended that Respondent then informed Mr. Fox he would not pay for the shares and on December 17, 1990 Respondents 16,000 shares of Compuchem were liquidated in accordance with the Customer Agreement, whereby, the liquidation left an outstanding balance of \$6,407.10, for which Respondent is liable. Claimant denied all allegations in the counterclaim but maintained that all the damages accrued by Respondent were due to market factors and Respondent assumed the risks involved in trading securities on margin.

Respondent maintained that Claimant's Statement of Claim fails to state a claim and is barred by the doctrine of Contributory Negligence in that due to the collective actions of Claimant's employees Respondent was unable to sell at the price asked or at a similar price. Respondent further maintained that the claim is barred under the Doctrine of Assumption of Risk because in prior dealings with Respondent Mr. Fox stated he had similar experience in which Respondent failed to pay for a purchase by the settlement date, which if true, Mr. Fox placed his employer in jeopardy of sustaining losses by accepting the order. Respondent maintained the claim is barred under the Doctrine of Equitable Estoppel in that

Claimant's agent breached his fiduciary duty and committed a breach of contract. Respondent further asserted a counterclaim for negligent representation, breach of fiduciary duty, breach of contract and unfair and deceptive trade practice. Respondent maintained that Claimant's employee Fox told Respondent he was liable for payment by December 17 and Claimant sold the stocks during the day on December 17, whereby, Claimant violated its own deadline to allow Respondent to pay for the purchase by close of business.

### **RELIEF REQUESTED**

Claimant requested \$7,239.02 plus interest, costs, expenses and attorneys' fees and all counterclaims be dismissed.

Respondent requested all claims be dismissed, \$8,441.00 plus interest for compensatory damages, attorneys' fees plus punitive damages.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent James Shelton Long be and hereby is liable and shall pay Claimant A. G. Edwards & Sons, Inc. the sum of \$7,239.02 inclusive of interest.
2. Respondent be and hereby is liable and shall pay Claimant the sum of \$4,405.25 to represent attorneys' fees costs and expenses.
3. Respondent be and hereby is liable and shall pay Claimant the sum of \$575.00 to represent filing fees and hearing session deposit.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

$$2 \text{ sessions} \times \$300.00 = \$600.00 \text{ less } \$475.00 = \$125.00 \text{ net due.}$$

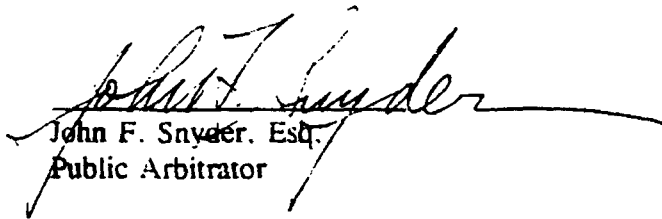
Forum Fees Assessed Against:

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Respondent be and hereby is liable and shall pay the NASD the sum of \$125.00 to represent forum fees.

The NASD shall retain the \$500.00 filing fee and \$75.00 hearing session deposit previously paid by Claimant and the \$120.00 filing fee and \$400.00 hearing session deposit previously paid by Respondent.

**ARBITRATOR SIGNATURE**



John F. Snyder, Esq.  
Public Arbitrator

Date of Decision: October 18, 1993