

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)

Innovating Worthy Projects Foundation  
Irving W. Packer

Case No. 92-02060

Name of Respondent(s)

A.G. Edwards & Sons, Inc.  
David D. David

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**REPRESENTATION**

For Claimants, Innovating Worthy Projects Foundation ("Innovating") and Irving W. Packer ("Packer"): Randall Henley, Esq of Henley & Brabham , P.A.

For Respondents, A.G. Edwards & Sons, Inc. ("A.G. Edwards") and David D. David ("David"): Jeff Jamieson, Esq. of A. G. Edwards.

**CASE INFORMATION**

Statement of Claim filed: June 18, 1992. Claimants' Submission Agreements signed: June 8, 1992 by Irving Packer, individually and as chairman of Innovating.

Respondents' Statement of Answer filed: August 27, 1992. Respondents' Submission Agreements signed: July 20, 1992 by David, and on August 26, 1992 by Stephen Sneeringer on behalf of A. G. Edwards.

**HEARING INFORMATION**

On September 30, 1993, in Fort Lauderdale, Florida, a pre-hearing conference lasting one session was conducted via telephone conference call with an arbitrator.

On October 22 and November 30, 1993, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

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### **CASE SUMMARY**

Claimants alleged that: Respondents were liable for: fraud, breach of fiduciary duty; negligence; failure to supervise; and, violation of Section 12(2) of the 1933 Securities Exchange Act. Claimants alleged that Respondents failed to advise Claimants that: the Putnam High Income Government Trust Fund, which Respondents recommended to Claimants, sold options on its securities; the income paid by the Fund contained a return of principal; and, the principal could greatly decrease in value. Claimants alleged that the investment was not suitable for them and Respondents' actions constituted a violation of Section 10(b) and Rule 10b-5 of the Securities Exchange Acts.

Respondents denied all allegations of wrongdoing and alleged that: David informed Packer that the Fund employed an option writing strategy and that the Fund's net asset value would fluctuate; Claimants were advised of the risks involved; Claimants received a prospectus; and Claimants received dividends and capital gains in excess of any loss and thereby obtained a net profit.

Respondents alleged the affirmative defenses of: statutes of limitations; ratification; account stated; estoppel; waiver; laches; contributory negligence; assumption of risk; unforeseeable market factors caused any damages; and, failure to state a claim.

### **RELIEF REQUESTED**

Claimants requested damages in a total amount of \$88,057 plus interest, punitive damages, attorney's fees and costs.

Respondents requested dismissal of the claim plus costs.

### **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 originals remain on file with the NASD.

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### **AWARD**

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

1. Respondents, A.G. Edwards and David, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' request for attorney's fees, costs and punitive damages is denied.
3. Respondents' request for costs is denied.

### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

### **FORUM FEES**

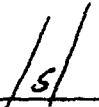
1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,300 (one pre-hearing conference x \$300 plus four sessions x \$500 per session).
2. Claimants are hereby assessed \$1,150, jointly and severally, payable to the National Association of Securities Dealers, Inc.
3. Respondent A.G. Edwards, is hereby assessed \$1,150 payable to the National Association of Securities Dealers, Inc.
4. Claimants are also assessed, jointly and severally, \$150 for the non-refundable filing fee, which is also payable to the National Association of Securities Dealers, Inc.

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


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Concurring Arbitrators' Signatures

  
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Louise T. Jeroslow, Esq.

Public

  
\_\_\_\_\_  
Arnold Sarrow

Public

  
\_\_\_\_\_  
Robert P. Root

Industry

Date of Decision: 12/15/93