

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Paul L. Bishop

NASD Arbitration  
No. 92-04247

Name of Respondent(s)

A.G. Edwards & Sons, Inc.

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REPRESENTATION

For Claimant: Eric G. Wallis, Esq., Crosby, Heafey, Roach & May,  
Oakland, California

For Respondent: Clay L. Grumke, Esq., A.G. Edwards & Sons, Inc.,  
St. Louis, Missouri

CASE INFORMATION

Statement of Claim filed: December 18, 1992

Answer to Counterclaim filed: March 4, 1993

Claimant's Submission Agreement signed: December 16, 1992

Statement of Answer and Counterclaim filed by Respondent: February  
23, 1993

Respondent's Submission Agreement signed: February 19, 1993

HEARING INFORMATION

Pre-Hearing Conference Date/Session: None

Hearing Date/Session: October 8, 1993 (one session)

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant alleged that following his resignation from A.G. Edwards & Sons, Inc. (Edwards), Respondent refused, and continues to refuse, to pay Claimant the sum of \$12,595.35 representing the

amount Claimant contributed to Edwards' Employee Stock Purchase Plan (Plan). Claimant further alleged breach of contract, breach of the implied covenant of good faith and fair dealing and negligent and intentional infliction of emotional distress.

Respondent denied each and every allegation made in Claimant's Statement of Claim and alleged that under the terms of the Plan, Edwards has discretion to offset amounts owed by Claimant to Edwards against the funds contributed to the fund by Claimant. Respondent further alleged that between September 12, 1991, and May 29, 1992, Claimant contributed a total of \$12,019.13 to the Plan, and Edwards presently holds said sums in a special escrow account pending the outcome of certain customer complaints against Claimant.

In its Counterclaim, Respondent alleged that pursuant to the Investment Broker Agreement between the above-captioned parties, Edwards is entitled to indemnification or contribution from Claimant if Edwards is held liable in any amount to various customers who have filed or who may file complaints against Claimant.

Claimant denied any liability to Edwards with respect to their Investment Broker Agreement and asserted affirmative defenses.

#### RELIEF REQUESTED

Claimant requested:

1. Damages in the amount of \$12,595.35;
2. Lost interest on the \$12,595.35 sum commencing June 1, 1992, or at the latest commencing September 1, 1992;
3. Attorneys' fees and costs;
4. Emotional distress damages of \$5,000.00;
5. Claimant's filing fee and hearing deposit; and
6. Any other and further relief as the panel may deem just and proper.

Respondent requested that it be awarded from Claimant any and all costs and expenses incurred in connection with the defense of this arbitration proceeding including attorney's fees and be awarded any and all costs and expenses or liabilities arising from any decision against Edwards and in favor of Anderson or any other former customer of Claimant through indemnity, contribution, or contract.

#### OTHER ISSUES CONSIDERED AND DECIDED

On October 5, 1993, the arbitrators met via telephonic conferencing to review and consider the written positions of the parties relative to Edwards' Motion to join Jeffrey R. Anderson as a Claimant in this matter and Edwards' Motion to postpone the October 8, 1993 hearing date. The arbitrators denied both Motions.

— At the outset of the evidentiary hearing, the arbitrators heard and considered the positions of counsel relative to Claimant's Motion to amend his Statement of Claim to assert a claim for violation of the California Labor Code. The arbitrators also heard and considered the positions of counsel relative to Claimant's Motion to Dismiss Respondent's Counterclaim. The arbitrators granted Claimant's Motion to amend his Statement of Claim and ruled to admit post hearing briefs on this issue following the completion of the evidentiary hearing. The arbitrators denied Claimant's Motion to Dismiss Respondent's Counterclaim.

The parties have agreed that the Award in this matter may be executed in either 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 National Association of Securities Dealers, Inc. (NASD).

#### **AWARD**

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

1. Respondent A.G. Edwards & Sons, Inc. is liable for and shall pay to Claimant Paul L. Bishop the sum of \$12,595.35 plus interest at the rate of 7% per annum from June 1, 1992 until date of payment of this Award.
2. Respondent A.G. Edwards & Sons, Inc. is liable for and shall pay to Claimant Paul L. Bishop the sum of \$500.00 as reimbursement for Claimant's filing fee.
3. All other claims by Claimant are dismissed.
4. The Counterclaim by Respondent A.G. Edwards & Sons, Inc. is dismissed, without prejudice.
5. The parties shall each bear their respective costs including attorney's fees.

#### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$300.00 hearing session deposit previously deposited by the Claimant and retain the \$600.00 hearing session deposit previously deposited by the Respondent as costs of this proceeding.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Richard S. Dangerfield, Esq.	Industry Arbitrator
Robin Lynn Berry	Industry Arbitrator
Terrence W. Dorsey	Industry Arbitrator

Concurring Arbitrators' Signatures

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Richard S. Dangerfield, Esq.

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Robin Lynn Berry

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Terrence W. Dorsey

DATE SERVED: 12/7/93

Date of Decision: 12/3/93