

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

**In the Matter of the Arbitration Between**

**Name of Claimants**

Sheldon A. Cohen  
Erna L. Cohen, Joint Tenants

No. 93-00436

**Name of Respondents**

A.G. Edwards & Sons, Inc.  
Donald M. Levy

**REPRESENTATION OF PARTIES**

For Claimants: Michael Richards, Esq., of Heiskell, Donelson, Bearman, Adams, Williams & Caldwell, Memphis, Tennessee.

For Respondents: Jeff Jamieson, Esq., Litigation Counsel, A.G. Edwards & Sons, Inc., St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim and exhibits filed on or about: February 4, 1993.

Claimants' Submission Agreement signed on: February 18, 1993.

Joint Statement of Answer and exhibits filed by Respondents on or about: April 8, 1993.

Respondent A.G. Edwards & Sons, Inc.'s Submission Agreement signed on: April 6, 1993.

Respondent Donald M. Levy's Submission Agreement signed on: March 12, 1993.

**HEARING INFORMATION**

Hearing date: August 24, 1993. One (1) session.

Hearing Location: Memphis, Tennessee.

### CASE SUMMARY

Claimants, Sheldon A. Cohen and Emma L. Cohen ("Claimants") alleged that Respondent Donald M. Levy had not followed their explicit instructions and denied them important information concerning the issuing price of Calloway stock, an initial public offering. Claimants also alleged that Respondent A.G. Edwards & Sons, Inc. (hereafter referred collectively with Donald M. Levy as "Respondents") had not treated them in a fair or impartial manner in their investigation of the complaint.

In their joint Answer, Respondents, except as specifically admitted therein, denied each and every allegation contained in the Statement of Claim. In addition, Respondents asserted the following affirmative defenses:

1. Claimants failed to act promptly and with due diligence to mitigate their damages.
2. Claimants are barred from recovery by their contributory negligence.
3. The Claimants voluntarily assumed the risk associated in investing in securities, and their knowing and voluntary assumption of such risk had been the sole and proximate cause of their alleged damages.
4. The damages alleged suffered by the Claimants were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in Claimants' account, for which Respondents are not liable or responsible.
5. The complaint and each count thereof, fails to state a claim against Respondents upon which relief can be granted.
6. Claimants have ratified the alleged conduct about which Claimants complain.
7. Claimants authorized the alleged conduct of Respondents about which the Claimants complain.
8. Claimants are barred from any recovery for any of the alleged conduct of Respondents in Claimants' complaint by the doctrine of laches.

**RELIEF REQUESTED**

Claimants requested an award of \$10,066.52 plus interest.

Respondents requested that judgment be entered on their behalf and that all costs of this proceeding be assessed against the Claimants, and for such further relief as the arbitrator deemed appropriate.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed by 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, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, A.G. Edwards & Sons, Inc. and Donald M. Levy are jointly and severally liable for, and shall pay to the Claimants, Sheldon A. Cohen and Emma L. Cohen the sum of \$4,046.14 as satisfaction of their claims herein. The Award is the difference between what the Claimants paid (\$36.00/share) and what Claimants could have recovered if they had sold Calloway on the opening day (\$32.75/share), plus commissions.

**OTHER COSTS**

Respondents, A.G. Edwards & Sons, Inc. and Donald M. Levy are jointly and severally liable for, and shall pay to the Claimants, Sheldon A. Cohen and Emma L. Cohen the sum of \$200.00 as a partial Award of their filing fee and hearing session deposit previously paid to the NASD.

**FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

1 hearing session X \$300.00 = \$300.00

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the NASD shall retain the nonrefundable filing fee in the amount of \$100.00, and shall retain the hearing session deposit in the amount of \$300.00 previously paid to the NASD by the Claimants.

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

**ARBITRATOR'S SIGNATURE**

Dated:

August 25, 1993

/s/William J. Landers  
William J. Landers  
Presiding Chair  
Public Arbitrator

Date of Service by the NASD: \_\_\_\_\_