

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Norman C. Burks

93-04808

**Name of Respondents**

A.G. Edwards & Sons, Inc.  
Mark Chestnut

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**REPRESENTATION**

For Claimant: Jerry F. Safford, Esq. of Safford & Lanphear, Bowling Green, Kentucky.

For Respondent A.G. Edwards & Sons, Inc.: Jeff Jamieson, Esq. of A.G. Edwards & Sons, Inc., St. Louis, Missouri.

For Respondent Mark Chestnut: Steven O. Thornton, Esq. of Broderick, Thornton & Pierce, Bowling Green, Kentucky.

**CASE INFORMATION**

Statement of Claim filed: November 15, 1993.

Claimant's Submission Agreement signed on: January 12, 1994.

Statement of Answer filed by Respondent A.G. Edwards & Sons, Inc. on: March 28, 1994.

Respondent A.G. Edwards & Sons, Inc.'s Submission Agreement signed on: March 28, 1994.

Statement of Answer filed by Respondent Mark Chestnut on: April 8, 1994.

Respondent Mark Chestnut's Submission Agreement signed on: Respondent Mark Chestnut did not submit a Submission Agreement as required pursuant to

Section 25(b)(1) of the NASD Code of Arbitration Procedure.

**HEARING INFORMATION**

Hearing Dates/Sessions: November 8, 1994 / Two Sessions.

Hearing Location:           Louisville Bar Association  
                                  707 West Main Street  
                                  Louisville Bar Center  
                                  Louisville, Kentucky

**CASE SUMMARY**

Claimant Norman C. Burks ("Burks") alleged that Respondent Mark Chestnut ("Chestnut") made misrepresentations to Claimant and mishandled Claimant's account in connection with Claimant's purchase of 4,000 shares of Seven Oaks International Inc. stock. Claimant alleged that based upon Chestnut's recommendations Claimant sold 1,000 shares of Jostens, Inc. and 2,000 shares of Delchamps, Inc., which Claimant owned, and purchased 4,000 shares of Seven Oaks International, Inc. Claimant further alleged that Chestnut convinced Claimant that the transactions were advisable and prudent.

Claimant also alleged that Respondent A.G. Edwards & Sons, Inc. ("A.G. Edwards") had knowledge of Chestnut's activities in connection with Claimant's account and failed to properly supervise Chestnut.

Respondent A.G. Edwards maintained that Claimant opened his account with A.G. Edwards on or about July 28, 1998 when Claimant transferred his single account from J. C. Bradford. Respondent A.G. Edwards further maintained that on or about August 15, 1988 Claimant sold 2,000 shares Delchamps, Inc. and 1,000 shares Jostens, Inc. and at the same time purchased 4,000 shares Seven Oaks International, Inc. at 9 1/4 for a total investment of \$37,486.34. Respondent A.G. Edwards then maintained that in October 1988 the price of Seven Oaks International reached its high for the year of 12 1/8 per share and that at that time Claimant had an unrealized gain of approximately \$6,000 on his Seven Oaks Investment. Thereafter, Respondent maintained, the price of Seven Oaks International began to decline. Respondent A.G. Edwards maintained that the price per share of Seven Oaks International was communicated to Claimant in monthly statements and that from Claimant's receipt of monthly statements Claimant knew or should have known that the value of his Seven Oaks International investment had risen and then was declining. Respondent A.G. Edwards also maintained that Claimant received quarterly and annual reports

issued by Seven Oaks International and that Claimant knew or should have known of Seven Oaks International's declining revenues, negative earnings, and downsizing operations.

Respondent A.G. Edwards maintained the following affirmative defenses: (1) That as a result of Claimant's failure to notify A.G. Edwards of the alleged acts and omissions asserted by Claimant after receipt of written confirmations, monthly statements and other documents setting forth transactions in Claimant's account or after Claimant discovered or reasonably should have discovered the alleged acts and or omissions that Claimant was barred from recovery under the doctrines of ratification, account stated, estoppel, waiver and laches; (2) That Claimant failed to mitigate his damages after Claimant knew or should have known of the alleged acts and omissions asserted by Claimant; (3) That Claimant caused or contributed to cause the alleged damages by failing to exercise the degree of care over his affairs and investments which an ordinarily prudent investor would exercise; (4) That Claimant was aware of the risks involved with investing in securities; (5) That the damages allegedly suffered by Claimants were caused, if at all, by unforeseen market conditions; (6) That Claimant's statement of claim is barred by applicable statutes of limitation; and, (7) Claimant's Statement of Claim failed to state a claim against A.G. Edwards upon which relief could be granted.

Respondent Chestnut maintained that Claimant was barred from recovery under the doctrines of ratification, account stated, estoppel, waiver and laches as Respondent Chestnut relied upon the monthly statements which were provided to Claimant and Claimant's silence thereafter. Respondent Chestnut further maintained that Claimant failed to act promptly and with diligence to mitigate his damages after Claimant should have known of the alleged omissions of which Claimant complains. Respondent Chestnut also maintained that Claimant caused or contributed to cause the alleged damages of which Claimant complained by failing to exercise the degree of care over his affairs and investments which an ordinary investor would exercise. Respondent Chestnut then maintained that Claimant was aware of the risks associated with investing in securities and voluntarily assumed such risk and that Claimants knowing and voluntarily assumption of such risk was the sole and proximate cause of Claimant's alleged damages. Further, Respondent Chestnut maintained that the damages allegedly suffered by Claimant were caused, if at all, by unforeseeable market factors and conditions affecting the value of the securities in Claimant's account for which Respondent Chestnut is not liable or responsible. Respondent Chestnut also maintained that Claimant's statement of claim was barred by applicable statutes of limitation and that the statement of claim failed to state a cause of action upon which relief could be granted.

**RELIEF REQUESTED**

Claimant requested:

1. An award against Respondents in the amount of \$53,000 in actual damages.
2. Punitive damages in the amount of \$100,000.

Respondent A.G. Edwards requested:

1. That judgment be entered on behalf of Respondents and against Claimant on the claims of Claimant in this arbitration proceeding; and
2. That all costs of this arbitration proceeding, including, but not limited to, forum fees and Respondents' reasonable costs and expenses incurred in defending this matter, be taxed against Claimant; and
3. That Respondents be awarded such other and further relief as the Arbitration Panel deemed appropriate.

Respondent Chestnut requested:

1. That judgment be entered on behalf of Respondents and against the Claimant on the Claims of the Claimant in this arbitration proceeding; and
2. That Respondent Chestnut be awarded, against Claimant, all costs associated with the arbitration proceeding, including, but not limited to, forum fees, reasonable costs, and attorneys' fees; and
3. Any and all other relief to which Respondent Chestnut may be entitled.

**AWARD**

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

1. Claimant's Claims are denied.
2. Each Party shall bear its respective costs including attorneys' fees.

**FORUM FEES**

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

2 sessions X \$500 = \$1,000 due.

Forum fees Assessed Against:

1. Claimant is assessed the sum of \$500 which represents one-half of the total forum fees due, less \$500 hearing session deposit paid by Claimant leaving \$0 due.
2. Respondents are assessed the sum of \$500 which represents one-half of the total forum fees due. Respondents are liable, jointly and severally, and shall pay to the NASD the sum of \$500.

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

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Concurring Arbitrators' Signatures

Name

Public/Industry

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Robert P. Ross, Esq.

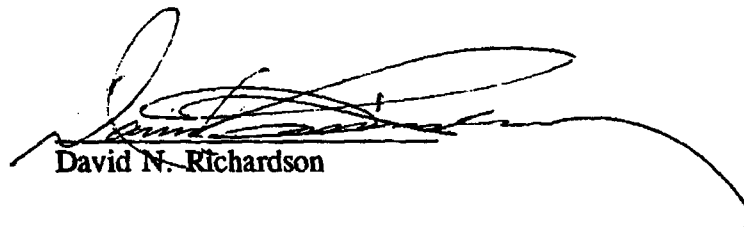
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Date of Decision: March 15, 1995

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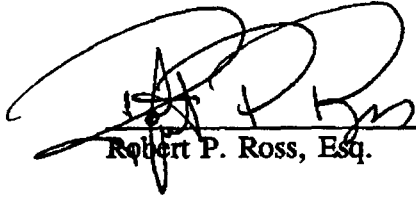
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