

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Colleen Budinsky  
John Budinsky

95-00815

Name of Respondents

A.G. Edwards & Sons, Inc.  
Gerald J. Buckley

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**REPRESENTATION**

Claimants John J. Budinsky and Colleen Budinsky ("Claimants"), Vanderbilt, Pennsylvania, appeared *pro se*.

Respondent A. G. Edwards & Sons, Inc. ("A.G. Edwards") and Gerald J. Buckley ("Buckley") were represented by William S. Port, Litigation Counsel, A.G. Edwards & Sons, Inc., St. Louis, Missouri.

**CASE INFORMATION**

The Statement of Claim was filed February 16, 1995.

Claimants' Uniform Submission Agreement was signed April 4, 1995.

A.G. Edwards' and Buckley's (collectively "Respondents") Statement of Answer was filed May 19, 1995.

A.G. Edwards' Uniform Submission Agreement was signed May 19, 1995.

Buckley's Uniform Submission Agreement was signed May 17, 1995.

**HEARING INFORMATION**

Hearing Date/Sessions: July 12, 1996/two sessions

Hearing Location: William Penn Hotel  
Pittsburgh, PA

**CASE SUMMARY**

Claimants alleged in their Statements of Claim, among other things, that Respondents were negligent in not disclosing material facts when Claimants requested information about purchasing shares of In Store Advertising ("ISAN"). Claimants alleged that Respondents also breached their fiduciary duty to Claimants. Claimants alleged that Claimant John Budinsky ("Mr. Budinsky") requested information about ISAN after Mr. Budinsky heard about it on television in the summer of 1990. Claimants alleged that while Buckley, who worked for Shearson Lehman at that time, told Mr. Budinsky that he knew nothing about ISAN and Shearson Lehman did not follow ISAN, Buckley would advise Budinsky if information

about ISAN was located. Claimants alleged that shortly thereafter, Buckley went to work for A.G. Edwards and asked Claimants to transfer their accounts but Claimants refused. However, Claimants alleged that shortly after the time of Buckley's move to A.G. Edwards, Mr. Budinsky again requested information on ISAN. Claimants alleged that Buckley informed them that ISAN stock was being recommended in a newsletter by a stock analyst. Claimants alleged that Buckley sent them a copy of the newsletter. Claimants alleged that based on the newsletter and as the stock had increased slightly in value, Mr. Budinsky called his broker at Shearson Lehman and requested a purchase of ISAN. However, with no explanation given, Shearson Lehman refused to make the purchase of ISAN shares. Claimants alleged that Mr. Budinsky called Buckley and explained what happened and that Buckley offered to purchase the stock for Claimants. Claimants alleged that Buckley opened an account for Mr. Budinsky and ordered 15,000 shares of ISAN. Claimants alleged at the hearing that Buckley then called Claimant Colleen Budinsky ("Mrs. Budinsky") at work and discussed the purchase of shares of ISAN which Mr. Budinsky requested. Mrs. Budinsky agreed to open an account with A.G. Edwards and to the purchase of 10,000 shares of ISAN in the account in her name. Claimants alleged that the total cost of the shares was in excess of \$104,000.00 for the two accounts. Claimants alleged, in the Statement of Claim, that Buckley did not call Mr. Budinsky to advise him that ISAN was dropping in value or that the company was in financial trouble. In her Statement of Claim, Mrs. Budinsky alleged that she was not consulted about the transaction to purchase ISAN and that she had not given power of attorney to her husband or Buckley. At the hearing Claimants alleged that for several years after purchasing ISAN, Mr. Budinsky was ill and not able to follow the market. Claimants alleged that as Respondents represent a full service brokerage firm, Claimants should have been warned, especially after another brokerage firm refused to buy the stock. Claimants alleged that the negligent actions of Respondents damaged them for which they should be compensated.

Respondents denied all allegations of wrong-doing. Respondents maintained that Buckley began employment with A.G. Edwards in November, 1990 and invited Claimants to transfer their accounts from Shearson Lehman in December 1990, which Claimants declined. Respondents maintained that Mr. Budinsky requested information for the second time about ISAN. Respondents maintained that each time Claimants requested information about ISAN, Claimants were informed that Buckley knew nothing about ISAN and that the firm did not follow ISAN. Respondents maintained that early in 1991 Buckley sent a copy of the Dick Davis Digest ("Digest") which contained information about ISAN to Mr. Budinsky as requested. Respondents maintained that the Digest warned that ISAN had been extremely volatile and expressed reservations concerning the viability of the company. Respondents maintained that shortly after receiving the Digest, Mr. Budinsky contacted Buckley regarding the purchase of ISAN. Respondents maintained that Mr. Budinsky opened an account and authorized the purchase of 15,000 shares of ISAN on February 14, 1991. Respondents maintained that as Mr. Budinsky did not have power of attorney for Mrs. Budinsky at that time, Buckley would have to speak with Mrs. Budinsky directly. Respondents maintained that Buckley then called Mrs. Budinsky at work at Mr. Budinsky request and discussed the proposed purchase of 10,000 shares of ISAN in an account in her name. Respondents maintained that Mrs. Budinsky confirmed, also on February 14, 1991, that she authorized the opening of an account in her name and the purchase of 10,000 shares of ISAN. Respondents maintained that as Mrs. Budinsky indicated her desire that Mr. Budinsky be given authority to conduct transactions in her account, Respondents sent a Full Trading Authorization form for her to execute in order to allow Mr. Budinsky to execute transactions on her behalf in her account. Respondents maintained that Mrs. Budinsky executed the Trading Authority on February 21, 1991. Respondents maintained that Claimants were sent periodic statements of their accounts and those statements clearly indicated the volatile nature of ISAN stock as it was the only stock in Claimants' accounts. Respondents maintained that Claimants never informed Respondents of Mr. Budinsky's ill health and that, in fact, Buckley contacted Mr. Budinsky in October 1992 to discuss ISAN. Respondents maintained that Buckley questioned Mr. Budinsky on the

propriety of continuing to hold the stock and suggested selling ISAN to salvage some of the remaining value. Respondents maintained that Mr. Budinsky stated that he was following ISAN closely and they just needed loans and that Mr. Budinsky wished to hold the shares. Respondents raised affirmative defenses of the doctrines of ratification, account stated, estoppel, waiver and laches due to the silence of Claimants. Claimants failed to mitigate their damages, contributory negligence, assumption of risks, unforeseeable market conditions and failure to state a claim upon which relief can be granted. Respondents maintained that no material facts were withheld from Claimants, there was no breach of the fiduciary duty to Claimants and that any damages suffered by Claimants were the result of Claimants' own actions and decisions.

### **RELIEF REQUESTED**

Claimants requested actual damages in the amount of \$105,002.40 as well as punitive damages of \$100,000.00.

Respondents requested that the Statement of Claim be dismissed in its entirety and that the costs and fees associated with the defense of this matter, including reasonable attorney's fees, be assessed to Claimants.

### **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.

### **AWARD**

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

1. That the Claimants' Statements of Claim be dismissed in their entirety.
2. That the Claimants' requests for punitive damages be denied.
3. That each party shall bear its own costs and expenses.
4. That any relief not specifically addressed herein is denied.

### **FORUM FEES**

Pursuant to Section 10332(c) (previously Section 43(c)) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 Sessions x \$750.00 = \$1,500.00

Forum Fees are assessed to Claimants and Respondents in equal amounts. Claimants are to receive credit for the \$750.00 hearing session deposit previously deposited. Respondents, joint and severally, have a net assessment due of \$750.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

7/26/96

Robert C. Devlin  
Robert C. Devlin, Presiding  
Public Arbitrator

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Cynthia M. Frederick  
Public Arbitrator

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Paul H. McKenna  
Industry Arbitrator

Date Decision Served by NASD:

July 26, 1996

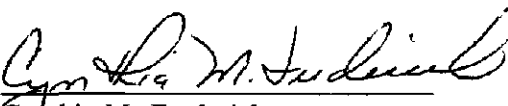
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CONCURRING ARBITRATORS' SIGNATURES

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Robert C. Devlin, Presiding  
Public Arbitrator

7/19/96

  
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Cynthia M. Frederick  
Public Arbitrator

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Paul H. McKenna  
Industry Arbitrator

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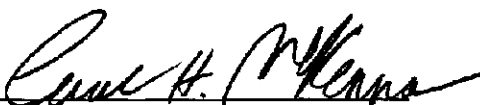
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Robert C. Devlin, Presiding  
Public Arbitrator

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Cynthia M. Frederick  
Public Arbitrator

7/22/96

  
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Paul H. McKenna  
Industry Arbitrator

Date Decision Served by NASD: July 26, 1996