

**AWARD**  
**NASD Regulation, Inc.,**

In the Matter of Arbitration Between

Jimmie D. Ross  
Claimant,

and

A. G. Edwards & Sons, Inc. and Merrill Lynch & Co.  
Respondents.

No. 96-01196

**REPRESENTATION OF PARTIES**

Claimant, Jimmie D. Ross, ("Claimant"), was represented by Rick J. Bearfield, Esquire and Michael A. Eastridge, Esquire of Bearfield, McClellan & Eastridge located in Johnson City, Tennessee

Respondent, A.G. Edwards & Sons, Inc. ("Edwards") was represented by Clay L. Grumke, Esquire Associate Vice-President and Counsel for A.G. Edwards & Sons, Inc. located in St. Louis, Missouri.

Respondent Merrill Lynch & Co. ("Merrill") was represented by Mathew D. Brownfield, Esquire of Grant, Konvalinka & Harrison located in Chattanooga, Tennessee.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on or about March 19, 1996. Claimant's Submission Agreement was signed on February 8, 1996.

Respondent Edward's Statement of Answer was filed on or about July 8, 1996. Respondent's Submission Agreement was signed on July 3, 1996 by Stephen G. Sneeringer, its Vice President & Counsel.

Respondent Merrill's Answer was filed on or about July 3, 1996. Respondent Merrill's Amendment to Answer was filed on or about October 7, 1996. Respondent Merrill's Submission Agreement was signed on June 11, 1996 by Thomas W. Smith, its First Vice President.

### **HEARING INFORMATION**

There was a pre-hearing held on September 15, 1998 for one (1) session with the Chairman of the arbitration panel.

The hearing was held on October 19, 1998 for two (2) sessions, October 20, 1998 for two (2) sessions, October 21 for two (2) sessions, and October 22, 1998 for two (2) sessions in Nashville, Tennessee for a total of eight sessions with the panel of arbitrators.

### **CASE SUMMARY**

Claimant Jimmie D. Ross alleged he had been damaged by Respondents Merrill and Edwards in connection with his employment with both firms. Claimant alleged that he joined Respondent Edwards in 1981 as a stockbroker, was transferred to South Carolina in 1989, and finally was transferred to Johnson City to assume the role of branch manager in March of 1991. He asserted that the Johnson City branch was in turmoil based on prior difficult management and personnel transitions. However, upon assuming the management position of the Johnson City Office, Claimant requested compliance checks which ultimately resulted in complimentary reports and made the office profitable within seven months of his arrival. In addition, Claimant alleged that in October of 1992 when the NASD performed a routine review of the office, it found that there was general compliance with the rules and regulation reviewed under Claimant's tenure as branch manager.

Claimant alleged that despite his success in the office his supervisors thwarted his efforts to resolve lingering personnel problems. As a result of adverse conditions created by certain office personnel and Claimant's supervisor Marlow Neil Morgan, Claimant resigned as branch manager in spring of 1993 and resumed full time trading at Respondent Edwards. Soon thereafter, Claimant was recruited by Respondent Merrill. Claimant accepted the offer and entered into a contract of employment dated August 16, 1993 with respondent Merrill to begin work as a stockbroker at their Johnson City branch on August 20, 1993.

On or about August 24, 1993, Respondent Edwards prepared a "U-5" termination statement on Claimant. Claimant alleged that Respondent Edwards misrepresented NASD's routine review by stating "The NASD has been requesting information relating to supervisory practices in the Johnson City, Tennessee branch office of A.G. Edwards, as well as certain of Mr. Ross's customer transactions." Claimant alleged that this cast him in a false light and greatly damaged his reputation and his business. In September of 1993, Respondent Merrill allegedly informed Claimant that it would not honor their employment contract of August 16, 1993. The basis for this decision, as alleged in the Statement of Claim, was that someone from Edwards had stated that "Jimmie Ross was going to be terminated anyway and was going to be charged with failure to supervise." Claimant alleged that this publication was slanderous, false, malicious, cast Claimant in a false light and tended to injure the good name and reputation of Claimant by exposing

him to public embarrassment and harmed his business. As a result of this, Claimant alleged he has suffered damages and injury to his business including lost wages, commissions and bonuses, decreased benefits and client contacts and the loss of his television show.

Respondent A.G. Edwards & Sons, Inc. denied any wrongdoing as alleged in the Claimant's Statement of Claim. Respondent Edwards alleged that in March of 1991 Claimant became the branch manager of the Johnson Tennessee office. In the course of Claimant's management he hired an investment broker who was accused of theft and investigated by the NASD. This investigation, as alleged, included investigation into the past and present supervision of the office and customer complaints involving one of Claimant's clients. Respondent Edwards asserted that the investigation by the NASD resulted in a letter of caution to Claimant and a referral of supervision to the Business Conduct Committee. After the investigation in March of 1993, Respondent Edwards installed a new manager in the Office and Claimant returned to full time production and was relieved of his management duties. In August of 1993 Claimant turned in his resignation to join the Merrill Johnson City office.

Respondent Edwards alleges that at the time Claimant resigned, a U-5 termination notice was required to be filed by industry regulations. On this notice, Respondent Edwards alleges that it was required to disclose the facts that Claimant had been the subject of a customer complaint which was settled for an amount in excess of \$15,000.00. Additionally, at the time that Claimant left Respondent Edwards, the investigation by the NASD was pending. Therefore, Respondent Edwards was required to disclose this information. After Claimant left, Cynthia Strader ("Strader") the manager of Edward's registration department was contacted by Charles Dietz ("Dietz") of Merrill's registration department. Merrill inquired of Claimant's U-5 disclosures expressing concern about Claimant's background and information to be used for the U-4 it would soon file. Strader also told Dietz that Claimant had been sending out letters to clients and had run a newspaper advertisement without being properly registered by Merrill. Later, Strader allegedly called Peter Serenita ("Serenita") of Merrill and told him that the NASD had not declared an investigation but had sent Respondent Edwards a series of letters about the supervision of the Johnson City Office, and that although the NASD was also asking questions about Claimant's individual account with Respondent Edwards, there had been no other customer complaints other than the complaint already registered on Claimant's CRD record from 1990. Serenita allegedly said that if Merrill hired Claimant and found out anything bad, "he's history." Strader told Serenita that she thought Claimant had no obligation to report or confess this information. Merrill also contacted an attorney for Edwards who allegedly told Merrill, that there was nothing to report on Claimant outside what was on the U-5. Respondent Edwards also asserted various defenses in response to the allegations contained in the Statement of Claim.

Respondent Merrill Lynch & Co. denied any wrongdoing as alleged in the Claimant's Statement of Claim. Respondent Merrill alleged in its Statement of Answer

that Claimant Ross approached Merrill seeking employment in the summer of 1993. During the discussion between Claimant and Respondent Merrill, Claimant allegedly advised Merrill that there were no pending complaints and no problems with, nor clouds upon, his registration, and that his registration was clean and would transfer without difficulty. A scale of compensation was agreed to contingent upon Claimant providing services to Merrill as a stockbroker.

Merrill asserted that shortly after Claimant moved into its office in August of 1993, Merrill received a copy of Claimant's U-5 which allegedly contained negative information. In addition, Respondent Merrill stated that its representatives became aware of other complaints about Claimant's activities while at Respondent Edwards. Claimant was given an opportunity to resolve his problems with Respondent Edwards related to the U-5, but allegedly did not do so. Therefore, Merrill did not employ Claimant as a stockbroker and Claimant never commenced employment with Respondent Merrill. Merrill asserted that out of fairness it compensated Claimant for the brief period he was at Respondent Merrill, but that at all times Claimant was an employee-at-will subject to termination without cause or notice.

#### **RELIEF REQUESTED**

Claimant Jimmie D. Ross requested an award for compensatory damages against all Respondents in an amount not less than \$5,304,730.00, general damages for false light defamation against Respondent A.G. Edwards & Sons, Inc. in an amount not less than \$600,000.00, punitive damages against Respondent A.G. Edwards & Sons, Inc. in amount that may prove appropriate to the Arbitration Panel, the costs of arbitration and all attorney's fees, and other and further relief as to which the Arbitration Panel deems him entitled.

Respondent Merrill Lynch & Co. requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs and attorney's fees and any other relief to which it may be entitled. In its Amendment to Answer Respondent Merrill requested that it be awarded its cost and attorneys fees related to the defense and removal of this matter from the Chancery Court of Washington County, Tennessee to arbitration.

Respondent A.G. Edwards & Sons, Inc. requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs and attorney's fees required to remove this matter from the Court system into arbitration.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

Claimant Jimmie D. Ross filed a Complaint against Respondents A.G. Edwards & Sons, Inc. and Merrill Lynch in the Chancery Court for Washington County at Johnson City, Tennessee claiming relief for defamation, tortious interference with a contract, and breach of contract. The Respondents A.G. Edwards & Sons, Inc. and Merrill Lynch & Co.

responded by asking that Ross be compelled to arbitrate this dispute. By Order entered the 18<sup>th</sup> day of April, 1995, the Respondents' Motions were granted.

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 Regulation, Inc. Office of Dispute Resolution.

### 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 Respondent A.G. Edwards & Sons, Inc. is liable for and shall pay the sum of eight hundred and forty thousand dollars (\$840,000.00) in compensatory damages to Claimant Jimmie D. Ross;
2. That Respondent Merrill Lynch & Co. is liable for and shall pay seventy seven thousand eight hundred thirty one dollars and no cents (\$77,831.00) in compensatory damages to Claimant Jimmie D. Ross;
3. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

### FORUM FEES

Forum fees are calculated at the rate of \$1,500.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There was one pre-hearing conference and there were eight (8) hearing sessions x \$1,500.00 = \$9,900.00 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "Code," a hearing session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with an Arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, Claimant, Jimmie D. Ross, has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the non-refundable filing fee of \$500.00. Respondents, A.G. Edwards & Sons, Inc. and Merrill Lynch & Co., are jointly and severally liable for the forum fees in this matter. Therefore, A.G. Edwards & Sons, Inc. shall pay the sum of \$4,950.00 to NASD Regulation, Inc., Office of Dispute Resolution. Merrill Lynch & Co. shall also pay the sum of \$4,950.00 to NASD Regulation, Inc., Office of Dispute Resolution.

Respondents, A.G. Edwards & Sons, Inc. and Merrill Lynch & Co., are jointly and severally liable for reimbursement of the filing fee of \$500.00 previously paid by

Claimant Jimmie D. Ross in this matter. Therefore, A.G. Edwards & Sons, Inc. shall pay the sum of \$250.00 to Claimant Jimmie D. Ross. Merrill Lynch & Co. shall also pay the sum of \$250.00 to Claimant Jimmie D. Ross.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

**OTHER FEES**

Pursuant to Rule 10333 of the Code, Respondent, A.G. Edwards & Sons, Inc., has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the \$500.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent, Merrill Lynch & Co., has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the \$500.00 member surcharge previously invoiced.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

**Concurring Arbitrators' Signatures:**

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Joe C. Loser, Jr.  
Chairperson  
Public Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Peter J. Towle  
Panelist  
Public Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
John Thomas Deutsch  
Panelist  
Industry Arbitrator

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Date

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NASD Regulation, Inc., Office of Dispute Resolution  
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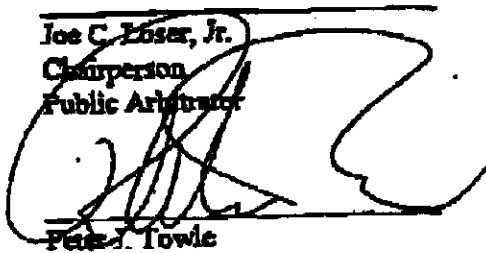
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Joe C. Loser, Jr.  
 Chairperson  
 Public Arbitrator



Peter J. Towle  
 Panelist  
 Public Arbitrator

Date

Date

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John Thomas Deutsch  
 Panelist  
 Industry Arbitrator

Date



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