

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant(s)

Henry Koch

Arbitration
No. 96-03577

Name of Respondent(s)

A.G. Edwards & Sons, Inc.
John Herman

REPRESENTATION

For Claimant: Arthur S. Leider, Investors Arbitration Specialists,
Inc., San Diego, California

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

CASE INFORMATION

Statement of Claim filed: August 19, 1996

Claimant's Submission Agreement signed: September 25, 1996

Joint Statement of Answer filed by Respondents: December 2, 1996

Jeff Jamieson's letter of July 28, 1997 regarding John Herman and
Respondents' Answer

Respondent A.G. Edwards & Sons, Inc.'s Submission Agreement signed:
December 3, 1996

Respondent John Herman did not file a Submission Agreement.
However, Mr. Herman appeared at the hearing and is subject to NASD
Regulation, Inc. (NASDR) jurisdiction in accordance with Section
10301 of the NASDR Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

July 29, 1997 (one session)

November 11, 1997 (one session)

Hearing Date(s)/Session(s): January 12, 1998 (two sessions)

January 13, 1998 (two sessions)

January 14, 1998 (one session)

Hearing Location: San Diego, California

CASE SUMMARY

Claimant alleged the following causes of action with respect to investments in various securities: 1) Excessive activity and overtrading in violation of NASD Rules of Fair Practice Article III Section II; 2) Unsuitable Recommendations to Customers in violation of Article III, Section 2 of the NASD Rules of Fair Practice; 3) Unauthorized Transactions in violation of the NASD Rules of Fair Practice, Sections 1, 18 and 19; and 4) Failure to Supervise in violation of Article III, Section 27 of the NASD Rules of Fair Practice.

Respondents denied Claimant's allegations of wrongdoing and alleged that all transactions in Claimant's account with A.G. Edwards & Sons, Inc. (Edwards) were confirmed to Claimant by Edwards in writing in the form of confirmations, monthly statements and year-end statements. Respondents further alleged that Claimant is an experienced trader who knew what was occurring in his account on an ongoing and continuing basis; that Claimant, in his own handwriting, assumed responsibility for the trading in his account; and that Claimant controlled the trading in his account. Respondents also asserted affirmative defenses. Additionally, Respondent Edwards asserted a counterclaim for expenses including attorney's fees in connection with Respondents' defense of Claimant's claims.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in the amount of \$120,000.00;
2. Punitive damages in the amount of \$300,000.00;
3. Reasonable legal fees and costs;
4. Interest at prevailing rates; and
5. Such other relief as the panel may deem just and

proper.

Respondents requested that all of the claims of the Claimant be dismissed in their entirety and that Edwards be awarded its

expenses, including attorney's fees, pursuant to its contractual obligation provision with Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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 NASDR.

FINDINGS

No evidence was presented at the hearing with respect to unauthorized trading in Claimant's account, and Claimant withdrew that claim at the beginning of Respondents' closing argument.

The evidence presented at the hearing proved to the satisfaction of the panel the following facts: Claimant, a 66-year-old retiree, placed approximately 350 trades in his account during 1992 totalling over \$2,500,000 gross sales while the average monthly equity in the account was approximately \$110,000. The turnover ratio was 23.1. Most of the transactions were in low-priced, high-risk stocks. There was a substantial debit balance in Claimant's margin account during this period. Claimant also bought mutual funds on margin and treasury strips on margin. The commissions paid by Claimant to Edwards with respect to these trades were approximately \$80,000, constituting about 25% of the commissions generated in Respondent John Herman's accounts. Approximately 78% of Claimant's trades were marked by Mr. Herman as unsolicited and 22% as solicited. None of Mr. Herman's other accounts engaged in excessive trading or in trading in low-priced stocks similar to the trading engaged in Claimant's account.

During this period, Respondent Herman visited Claimant in his home some twenty or more times, took him to a restaurant for breakfast on a number of these occasions, and talked with him on the phone several times each work day. Very little evidence was introduced as to the substance of the conversations between Mr. Herman and Claimant during these meetings and phone calls. During this period, Claimant maintained accounts at other brokerage firms at which his trading followed the same or a similar pattern as that at Edwards, both as to the kind of securities and the extent to which the trades were unsolicited. Respondent Edwards wrote several happiness letters to Claimant and required Claimant to submit a handwritten letter accepting responsibility for his trading. Respondent's branch manager, Timothy Cronin, met at least once with Claimant in his office regarding activity in Claimant's account and had possibly two or three other meetings or encounters with Claimant in the branch office. Respondents kept no diaries or

notes of such meetings, and Respondents testified that it is not their practice to keep diaries or handwritten notes of meetings or phone conversations.

The panel finds that the trading which occurred in Claimant's account was excessive and was unsuitable for Claimant in light of his age, experience, and financial situation. However, the panel finds that Claimant initiated the trades in his account based on information which he obtained from sources other than Respondents and that Respondents did not control the account, did not recommend the trading which resulted in the losses and are not legally liable to Claimant for his losses.

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. All claims by Claimant, including the claim for punitive damages, are dismissed.
2. All claims with respect to Respondents' Counterclaim are dismissed.
3. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

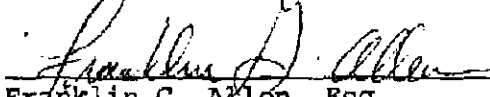
Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: NASDR shall retain A.G. Edwards & Sons, Inc.'s hearing session deposit in the amount of \$300.00. Forum fees are assessed against A.G. Edwards & Sons, Inc. in the amount of \$4,050.00, calculated as follows: Two pre-hearing sessions times \$300.00, plus five hearing sessions times \$750.00, minus the \$300.00 retained by NASDR.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Franklin G. Allen, Esq.	Public Arbitrator
David G. Axtmann, Esq.	Public Arbitrator
James O. Johnson, Jr.	Industry Arbitrator

Concurring Arbitrators' Signatures



Franklin G. Aflen, Esq.

David G. Axtmann, Esq.

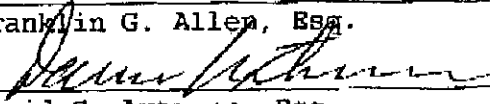
James O. Johnson, Jr.

Date of Decision: _____

Date Served: 02/20/98

Concurring Arbitrators' Signatures

Franklin G. Allen, Esq.



David G. Axtmann, Esq.

James O. Johnson, Jr.

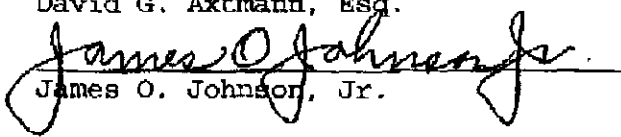
Date of Decision: _____

Date Served: 02/20/98

Concurring Arbitrators' Signatures

Franklin G. Allen, Esq.

David G. Axtmann, Esq.


James O. Johnson, Jr.

Date of Decision:

Jan. 14, 1998

Date Served: 02/20/98