

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

Richard C. Frank

Case No.  
97-00017

vs

Name of Respondents

A.G. Edwards & Sons, Inc.  
Roger Stevenson

REPRESENTATION

For Claimant Richard C. Frank ("Claimant") appeared Jeffrey A. Sellers, Esq., of the firm Silverberg, Yood, Sellers & McGorry located in Buffalo, New York.

For Respondents A.G. Edwards & Sons, Inc. ("A.G. Edwards") and Roger Stevenson ("Stevenson"), collectively referred to as "Respondents", appeared William S. Port, Esq., of the firm A.G. Edwards & Sons, Inc. located in Saint Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on: December 23, 1996.

Claimant's Submission Agreement signed on: January 30, 1997.

Respondents filed a Joint Statement of Answer on: February 11, 1997.

Respondent A.G. Edwards' Submission Agreement signed on: February 06, 1997.

Respondent Stevenson's Submission Agreement signed on: January 24, 1997.

HEARING INFORMATION

Hearing Dates/Sessions:      October 14, 1997      Two Sessions

October 15, 1997      Two Sessions

The hearings were conducted at the Raddison Downtown located in Buffalo, New York.

CASE SUMMARY

Claimant alleged that Respondents excessively traded his account, using an investment strategy that Claimant was not familiar with and did not understand. Claimant further alleged that Respondents breached their fiduciary obligations to Claimant by recommending and executing trades which were inappropriate and inconsistent with Claimant's stated investment objectives, and by trading such positions on short and on margin. Claimant also alleged that Respondent A.G. Edwards failed to properly

supervise Respondent Stevenson and the activity in Claimant's account. Claimant asserted that Respondents' actions constituted breach of contract, breach of duty, violations of state and federal securities laws, and violations of NASD rules and regulations. Claimant further asserted that Respondents failed to provide competent and professional advice in accordance with applicable industry rules, regulations, customs and practices.

Respondents maintained that Claimant fails to set forth a cause of action, and therefore, Respondents deny each and every allegation made in the Statement of Claim. Respondent Stevenson maintained that at the time he became the broker for Claimant's account, he spoke at length with Claimant about Claimant's current security holdings and strategy for the future. Respondent Stevenson further maintained that at that time Claimant stated that he wished to pursue a more aggressive investment strategy. Respondents also maintained that Claimant never expressed displeasure about the handling of his account, and even transferred accounts from other brokerage houses to A.G. Edwards. Respondents asserted that short stock transactions, for which a margin account is required, was explained to Claimant and that Claimant executed a margin account customer agreement. Respondents further asserted that Claimant received monthly statements and trade confirmations, and that Claimant at no point stated that he wished to cease using the current trading strategy or that he was dissatisfied with the manner in which his account was being handled.

#### **RELIEF REQUESTED**

Claimant requested:

- (a) Respondents be jointly and severally liable for damages of \$49,855.00, plus interest from March 15, 1995;
- (b) Respondents be jointly and severally liable and reimburse Claimant, the sum by which they were unjustly enriched from commissions and margin interest charged; and
- (c) Such further relief that the panel deems just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety, that they be awarded fees and costs, including attorneys' fees, and all other such relief that the panel deem appropriate.

#### **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 original remains 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. Respondents be and hereby are, jointly and severally, liable and shall pay to Claimant the sum of \$3,500.00, plus interest accruing from the date of the award until paid.
2. Each party shall bear their own costs, including attorneys' fees.
3. Forum fees are to be assessed against Respondents.

4. All other requests for relief are hereby denied.

**FORUM FEES**

Pursuant to Rule 10332 of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$120.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:


4 Hearing Sessions x \$400.00	=	\$1,600.00
Total Forum Fees	=	\$1,600.00
Hearing Session Deposit	=	(\$ 400.00)
Balance Due NASD Regulation, Inc.	=	\$1,200.00

1. Respondents be and hereby are, jointly and severally, liable and shall pay to NASD Regulation, Inc. the sum of \$1,200.00 representing the balance due on the total forum fees assessed.
2. Respondent be and hereby are, jointly and severally, liable and shall pay to Claimant the sum of \$400.00, as reimbursement of the hearing session deposit.
3. Respondent A.G. Edwards be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$200.00 representing the Member Surcharge assessed. Respondent A.G. Edwards deposited \$200.00 with the NASD, and therefore, does not owe the Member Surcharge.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

I, Robert Gleichenhau, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein, and who executed this instrument which is my award.

  
Robert Gleichenhau, Esq.  
Public Chairperson

I, Lorraine I. Remo, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein, and who executed this instrument which is my award.

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Lorraine I. Remo, Esq.  
Public Panelist

I, Anthony Vitanza, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Anthony Vitanza  
Industry Panelist

Date of Decision: January 15, 1998

ARBITRATORS' SIGNATURES


I, Robert Gleichenhaus, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Robert Gleichenhaus, Esq.  
Public Chairperson

I, Lorraine I. Remo, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein, and who executed this instrument which is my award.

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Lorraine I. Remo, Esq.  
Public Panelist

I, Anthony Vitanza, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein, and who executed this instrument which is my award.

  
\_\_\_\_\_  
Anthony Vitanza  
Industry Panelist

Date of Decision: January 15, 1998


**ARBITRATORS' SIGNATURES**

I, Robert Gleichenhaus, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein, and who executed this instrument which is my award.

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Robert Gleichenhaus, Esq.  
Public Chairperson

I, Lorraine I. Renno, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein, and who executed this instrument which is my award.



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Lorraine I. Renno, Esq.  
Public Panelist

I, Anthony Vitanza, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein, and who executed this instrument which is my award.

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Anthony Vitanza  
Industry Panelist

Date of Decision: January 15, 1998