

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

A.G. Edwards & Sons, Inc.

vs.

Case No.  
97-02726

Name of Respondent

James C. Burns

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**REPRESENTATION**

For Claimant A.G. Edwards & Sons, Inc. ("Claimant") appeared Catherine Hope Johnson, Esq., in-house counsel at A.G. Edwards & Sons, Inc., located in St. Louis, Missouri.

For Respondent James C. Burns ("Respondent") appeared Frank Bersani, Jr., Esq., located in Syracuse, New York.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on May 30, 1997.  
Claimant's Submission Agreement was signed on May 27, 1997.

Respondent's Statement of Answer was filed on June 19, 1997.  
Respondent's Submission Agreement was signed on June 19, 1997.

**HEARING INFORMATION**

Pre-Hearing Conferences:	March 25, 1998	-	1 session
	August 26, 1998	-	1 session
	September 8, 1998	-	1 session
Hearing Date/Sessions:	December 18, 1998	-	2 sessions

The pre-hearing conferences were conducted telephonically. The hearings were conducted at the Marriott Syracuse Hotel, located in Syracuse, New York.

### **CASE SUMMARY**

Claimant alleges that, on October 27, 1994, Respondent and it entered into a Supplementary Training Agreement for An Investment Broker ("Training Agreement"). Claimant further alleges that, pursuant to the terms of the Training Agreement, in the event that Respondent terminated his employment with Claimant prior to twenty-four months from the date he becomes a fully registered investment broker, Respondent agreed to repay Claimant \$20,000.00, representing training expenses and benefits associated with training Respondent as an investment broker. Claimant asserts that the Training Agreement also provided that the amount owed to Claimant would be reduced by 5% of Respondent's gross commissions generated while he was employed by Claimant. Claimant states that Respondent terminated his employment on April 26, 1996 and is currently employed by J.W. Burns & Company, Inc. ("J.W. Burns"), as an investment counselor and asset manager. Claimant maintains that it preformed all conditions precedent to the Training Agreement. Claimant contends that, despite demands, Respondent has failed to repay the amounts due and is in breach of the Training Agreement.

Respondent denies liability and asserts nine affirmative defenses. Respondent contends that he had no alternative but to sign the Training Agreement if he was to accept employment with Claimant. Respondent maintains that his obligation to repay the training costs would arise only if within the twenty-four month training period, he accepted employment with a competitor of Claimants that is located within 75 mile radius of any of Claimant's offices in which Respondent was employed. Respondent also maintains that, throughout the course of his employment, Respondent opened approximately 100 new account and grossed over \$107,000.00 in commissions for Claimant. Respondent asserts that, through his performance, he has more than adequately compensated Claimant for any training course. Respondent further asserts that, subsequent to Respondent's employment, Claimant has also received \$11,640.00 in commissions directly from J.W. Burns as a result of accounts kept by J.W. Burns and trades made through those accounts. Respondent also alleges that Claimant selectively and discriminatorily brought this claim against Respondent because at least ten other members of Respondent's training class terminated their employment prior to the expiration of twenty-four months, but Claimant has not brought any claims against them based upon the alleged obligation for reimbursement under the "Training Agreement." Respondent alleges that Claimant brought this claim in retaliation when J.W. Burns withdrew it's small trading accounts with Claimant when the Claimant's branch manager made unethical and improper solicitation of J.W. Burns' client.

### **RELIEF REQUESTED**

Claimant requests recovery from Respondent for \$14,614.66 plus interest at the rate of 12% per year, accruing from April 26, 1996. Claimant also requests that Respondent be liable for all costs of this arbitration in addition to seeking such other further relief that the Panel deems just and proper.

Respondent requests that Claimant's Statement of Claim be dismissed in its entirety, together with all costs of this arbitration and such other further relief that the Panel deems just and proper.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions by Claimant dated January 4, 1999 and by Respondent dated January 15, 1999, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Respondent are hereby denied in their entirety;
2. All other claims for relief are hereby denied.

### **OTHER COSTS**

Pursuant to Rule 10333 of the *NASD Code of Arbitration Procedure* ("Code") Claimant has paid NASD Regulation, Inc. the \$200.00 member surcharge previously invoiced.

### **FORUM FEES**

Pursuant to Rule 10205(c) of the *Code*, the arbitrator has determined that the NASD will retain the \$500.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

3 Pre-Hearing Conferences x \$300.00	-	\$ 900.00
2 Hearing Sessions x \$300.00	-	\$ 600.00
Total Forum Fees	=	\$1,500.00

1. Claimant be and hereby is liable and shall pay NASD Regulation, Inc. the sum of \$750.00, representing half of the forum fees assessed. Claimant previously deposited \$600.00 and, therefore, shall pay NASD Regulation, Inc. the remaining \$150.00 balance.
2. Respondent be and hereby is liable and shall pay NASD Regulation, Inc. the sum of \$750.00, representing half of the forum fees assessed.

**SOLE INDUSTRY ARBITRATOR'S SIGNATURE**

  
Robina Fedora Asti

Date of decision: January 29, 1999

I, **Robina Fedora Asti**, 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.

  
Robina Fedora Asti