

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

I.V. Funding, Inc.

Case No. 99-00079

Names of Respondents

A.G. Edwards & Sons, Inc.  
Jeremy Duck

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**REPRESENTATION OF PARTIES**

For Claimant I.V. Funding, Inc., hereinafter referred to as "Claimant": Dan W. Taliaferro, Esq., Montgomery, Alabama.

For Respondent A.G. Edwards & Sons, Inc. ("Edwards"): Jeff Jamieson, Associate Vice President & Counsel, A.G. Edwards & Sons, Inc., St. Louis, Missouri.

For Respondent Jeremy Duck ("Duck"): A.C.G. Pettus, Sr., Esq. of the law firm of Pettus, Smith, Brown and Associates, L.L.C., Montgomery, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: January 6, 1999.

Claimant signed the Uniform Submission Agreement: January 6, 1999.

Statement of Answer filed by Respondent Edwards on or about: April 29, 1999.

Respondent Edwards signed the Uniform Submission Agreement: April 29, 1999.

Statement of Answer filed by Respondent Duck on or about: May 10, 1999.

Respondent Duck signed the Uniform Submission Agreement on or about: May 10, 1999.

**CASE SUMMARY**

Claimant asserted the following: On or about November 12, 1997, Leven H. Ellis, IV ("Ellis"), President of I.V. Funding, Inc., opened a corporate account funded with approximately \$73,000.00 with Respondent Edwards in Montgomery, Alabama. Ellis had previously maintained an account with Respondent Edwards for several years. On November 14, 1997, while traveling in his car, Ellis received a telephone call from Respondent Duck. Respondent Duck told Ellis that a stock trading under the name of Filene's Basement Corporation, at a cost of approximately \$7.00 per share, was guaranteed to increase in value, and that his corporation should purchase all that it could buy. Ellis consented to the

purchase of the stock on November 17, and Respondent Duck purchased 20,000 shares. Half of this stock was purchased on margin. The stock subsequently decreased in value and Respondent Edwards sold the stock to cover a margin call, resulting in a loss to Ellis of approximately \$43,000.00. Ellis never executed a corporate margin agreement and Respondent Edwards never had his permission to purchase stock on margin. Moreover, Ellis purchased the stock only because Respondent Duck guaranteed the stock would increase in value. Claimant asserted that Respondent Edwards never had authority to purchase the stock on margin, and that Respondent Duck improperly solicited the sale by guaranteeing the stock's performance.

Respondent Edwards denied each and every allegation set forth in the Statement of Claim including that Respondent Duck purportedly guaranteed the performance of Filene's Basement stock and asserted the following: The stock was purchased on margin in Ellis' account and later transferred to the I.V. Funding, Inc. account at Ellis' request. Ellis was asked on repeated occasions by both Respondent Duck and another individual, Reid Smith, to execute the appropriate corporate account agreement to allow margin in the I.V. Funding, Inc. account. Ellis repeatedly refused the requests of Respondent Duck and Reid Smith. Further, Respondent Edwards asserted the following affirmative defenses: ratification, account stated, estoppel, waiver and laches; failure to act promptly to mitigate damages; contributory negligence; assumption of risk; Claimant's damages were caused by unforeseeable market factors and conditions for which Respondents are not liable nor responsible; and, failure to state a claim.

Respondent Duck asserted the following: Respondent Duck was asked to handle a client for another busy broker. The first day Respondent Duck met Ellis, he wanted to place an order. An order and stock purchase was ultimately made, on margin. That purchase was Ellis' personal account. Later, that stock was transferred, at Ellis' request, to a corporate account upon which Ellis never signed a corporate contract. Ellis contended that Respondent Duck guaranteed the stock purchased would go up. Respondent Duck denied that he ever made, or ever would make, any guarantee. Respondent Duck asserted that he would have received a commission in any event; that he had no motive to "guarantee" a stock; it was the first day he met the client; and, he was a joint broker in this situation receiving only half the broker fee.

#### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$43,000.00.

Respondents requested that judgment be entered on behalf of Respondents and against Claimant on the claims of Claimant in this arbitration proceeding; that all costs of this arbitration proceeding, including, but not limited to, forum fees and Respondents' reasonable costs and expenses incurred in defending this matter, be taxed against Claimant; and, for such further relief as the arbitration panel deemed appropriate.

### **OTHER ISSUES CONSIDERED AND 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.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims against Respondents are denied in all respects.

All other requests for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:  
Initial claim filing fee = \$120.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$800.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$1,000.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

January 10 and 11, 2000, adjournment by Claimant. Adjournment fee of \$400.00 waived by the arbitration panel.

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two Pre-hearing sessions with Panel	x \$400.00	= \$800.00
Pre-hearing conferences:	August 30, 1999	1 session
	January 31, 2000	1 session

Two Hearing sessions x \$400.00	= \$800.00
Hearing Date: April 27, 2000	2 sessions
Total Forum Fees	= \$1,600.00

The Panel has assessed \$800.00 of the forum fees to Respondent Edwards.  
The Panel has assessed \$800.00 of the forum fees to Respondent Duck.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Respondent Duck requested copies of documents from the file at a cost of \$6.25.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$120.00
Total Fees	= \$120.00
<u>Less payments</u>	<u>= \$120.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Respondent Duck be and hereby is solely liable for:

Forum Fees	= \$800.00
Administrative Costs	= \$6.25
Total Fees	= \$806.25
<u>Less payments</u>	<u>= \$6.25</u>
Balance Due NASD Regulation, Inc.	= \$800.00

Respondent Edwards be and hereby is solely liable for:

Member Fees	= \$2,400.00
Forum Fees	= \$800.00
Total Fees	= \$3,200.00
<u>Less payments</u>	<u>= \$2,400.00</u>
Balance Due NASD Regulation, Inc.	= \$800.00

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Sonia Fishkin, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

/s/  
Kendall P. Hill  
Public Arbitrator

Signature Date

/s/  
Thomas Scott Watkins, J.D.  
Industry Arbitrator

**Signature Date**

May 25, 2000  
Date of Service (For NASD office use only)

Two Hearing sessions x \$400.00	= \$800.00
Hearing Date: April 27, 2000	2 sessions
Total Forum Fees	= \$1,600.00

The Panel has assessed \$800.00 of the forum fees to Respondent Edwards.  
The Panel has assessed \$800.00 of the forum fees to Respondent Duck.

#### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Respondent Duck requested copies of documents from the file at a cost of \$6.25.

#### Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$120.00
Total Fees	= \$120.00
<u>Less payments</u>	= \$120.00
Balance Due NASD Regulation, Inc.	= \$0.00

Respondent Duck be and hereby is solely liable for:


Forum Fees	= \$800.00
Administrative Costs	= \$6.25
Total Fees	= \$806.25
<u>Less payments</u>	= \$6.25
Balance Due NASD Regulation, Inc.	= \$800.00

Respondent Edwards be and hereby is solely liable for:

Member Fees	= \$2,400.00
Forum Fees	= \$800.00
Total Fees	= \$3,200.00
<u>Less payments</u>	= \$2,400.00
Balance Due NASD Regulation, Inc.	= \$800.00

All balances are due and payable to NASD Regulation, Inc.

#### Concurring Arbitrators' Signatures

  
Sonia Fishkin, Esq.  
Public Arbitrator, Presiding Chair

  
Signature Date

Date of Service (For NASD office use only)

Kendall P. Hill  
Public Arbitrator

Signature Date

  
Thomas Scott Watkins, I.D.  
Industry Arbitrator

5.23.00  
Signature Date

Date of Service (For ASD office use only)