

## Award

NASD Dispute Resolution, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

Robert Williams

Case No. 99-04904

Name of Respondents

A.G. Edwards & Sons, Inc.  
William J. Driscoll

Hearing Site: Boston, Massachusetts

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**REPRESENTATION OF PARTIES**

Claimant, Robert Williams ("Claimant"), hereinafter referred to as "Claimant": Anthony P. Alessi, Esq., Concannon Law Offices, Marshfield, Massachusetts.

Respondents, A.G. Edwards & Sons, Inc. ("A.G. Edwards") and William J. Driscoll ("Driscoll"), hereinafter collectively referred to as "Respondents": Nuviah Shirazi, Esq., A.G. Edwards & Sons, Inc., St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: October 29, 1999.

Claimant signed the Uniform Submission Agreement: October 28, 1999.

Statement of Answer filed by Respondents, on or about: January 31, 2000.

Respondent A.G. Edwards signed the Uniform Submission Agreement: March 1, 2000.

Respondent Driscoll did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of Massachusetts Uniform Securities Act; breach of contract, express or implied; misrepresentation; negligence; and respondeat superior. The causes of action involved the stock of IMS, Inc., Gold Rush Mining Corporation, Casino Mining, Bioune Systems, Inc., TMM, and Medalliance, Inc.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant did not register a timely complaint after receiving monthly statements concerning activity in his account; Claimant's failure to timely object to any of the transactions of which he complains constitutes a ratification of these transactions and a waiver or estoppel of Claimant's right to any recovery sought in the Statement of Claim; Claimant authorized trades at issue; Claimant failed to exercise the degree of care over his affairs and investments of an ordinarily prudent investor and therefore caused or contributed to any alleged damages complained of by Claimant, and is therefore barred by contributory negligence and/or comparative fault from recovery of alleged damages; Claimant's knowing and voluntary risks were the sole and proximate cause of his alleged damages; Claimant's alleged damages were caused, if at all, by unforeseeable market factors and conditions for which Respondents are not liable or responsible; that there is no legal basis for recovery of attorneys' fees, costs and interest; Claimant failed to act promptly and with due diligence to mitigate damages and his acts and/or omissions are responsible for the alleged loss; Claimant's claims are barred by all applicable statutes of limitations; Claimant's cause of action failed to state a claim upon which relief may be granted.

#### **RELIEF REQUESTED**

**Claimant requested:**

Compensatory Damages	\$164,990.00
Attorneys' Fees	unspecified
Other Costs	unspecified

**Respondents requested:**

Attorneys' Fees	unspecified
Other Costs	unspecified

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

Respondent Driscoll did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

At the hearing the parties agreed to allow the Panel to sign the Award in this matter in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claim is denied in its entirety.
2. That the parties shall bear their respective attorneys' fees and costs except as FEES are specifically addressed below.
3. That any and all relief not specifically addressed herein are denied in their entirety.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$300.00
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#### **Member Fees**

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

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

Hearing Dates: May 2 & 3, 2001

Adjournment by Respondent A.G. Edwards	= fee waived
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#### **Forum Fees and Assessments**

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

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One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference:      October 10, 2000	1 session
Four (4) Hearing sessions x \$1,125.00	= \$4,500.00
Hearing Date(s):              July 11, 2001	2 sessions
July 12, 2001	2 session
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Total Forum Fees	= \$5,625.00

The Panel has assessed \$1,125.00 of the forum fees to Claimant.

The Panel has assessed \$4,500.00 of the forum fees to Respondent A.G. Edwards.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,125.00
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Total Fees	= \$1,425.00
Less payments	= \$1,425.00
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Balance Due NASD Dispute Resolution, Inc.	= \$ 0

Respondent A.G. Edwards be and hereby is solely liable for:

Member Fees	= \$4,600.00
Adjournment Fee	= \$ 0
Forum Fees	= \$4,500.00
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Total Fees	= \$9,100.00
Less payments	= \$4,600.00
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Balance Due NASD Dispute Resolution, Inc.	= \$4,500.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

S. Lawrence Gwin, Jr.	-	Non-Public, Presiding Chairperson
William P. Hurley	-	Public Arbitrator, Panelist
Charles F. O'Connell	-	Public Arbitrator, Panelist

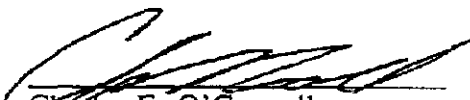
Concurring Arbitrators' Signatures

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S. Lawrence Gwin, Jr.  
Non-Public Arbitrator, Presiding Chairperson

7/30/01  
Signature Date

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William P. Hurley  
Public Arbitrator, Panelist

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Signature Date

  
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Charles F. O'Connell  
Public Arbitrator, Panelist

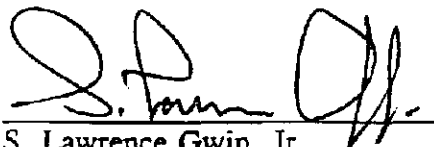
8/1/01  
Signature Date

8/9/01  
Date of Service (For NASD-Dispute Resolution office use only)

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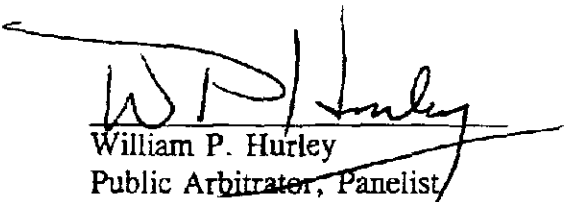
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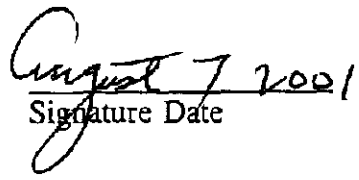
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