

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Hearing Site: Denver, Colorado

A.G. Edwards & Sons, Inc.

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] ("Claimant"): [REDACTED] AdvisorLaw,  
Broomfield, Colorado.

For Respondent A.G. Edwards & Sons, Inc. ("Respondent"): Thomas Octavian Jacobs,  
Esq., Wells Fargo Law Department, San Francisco, California.

**CASE INFORMATION**

Statement of Claim filed on or about: June 13, 2016.

Claimant signed the Submission Agreement: June 10, 2016.

Statement of Answer filed by Respondent on or about: August 10, 2016.

Respondent signed the Submission Agreement: August 10, 2016.

**CASE SUMMARY**

Claimant filed the above-captioned matter to seek expungement of a customer complaint with the Occurrence Number [REDACTED] ("the Underlying Complaint") from Claimant's Central Registration Depository ("CRD") record. Claimant asserted a cause of action for expungement pursuant to FINRA Rules 2080(b)(1)(A) and 2080(b)(1)(C).

Respondent advised that it does not take a position regarding Claimant's request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested the Panel enter an award recommending the expungement of any mention of the Underlying Complaint from Claimant's CRD records.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

In the Statement of Answer, Respondent's counsel advised that Respondent became a part of Wachovia Securities, LLC ("Wachovia") in 2008, and later that year, Wells Fargo acquired Wachovia, and Wachovia became Wells Fargo Advisors ("WFA"). Respondent's counsel further advised that WFA is the appropriate respondent and that he was submitting WFA's response to the Statement of Claim.

On October 28, 2016, Claimant filed a notice evidencing that on October 11, 2016, the customer that filed the Underlying Complaint ("Customer") was provided notice of the expungement hearing, along with a copy of the Statement of Claim filed in the above-captioned arbitration. On October 27, 2016, the Customer requested to be informed on developments in the case and on November 15, 2016, she filed a written opposition to Claimant's request for expungement.

On November 16, 2016, and January 23, 2017, the Panel conducted recorded telephonic hearings so parties could present evidence on Claimant's request for expungement. Respondent's counsel and the Customer participated in the hearings. The Customer opposed Claimant's request for expungement.

The Panel determined that no settlement agreement was ever reached between the parties and the Customer of the Underlying Complaint, as the Underlying Complaint was responded to and denied by A.G. Edwards & Sons, Inc.

The Panel notes that Claimant advised that an arbitration panel has not previously denied expungement of the Underlying Complaint.

In recommending expungement, a majority of the Panel relied upon the following documentary or other evidence: Claimant's Statement of Claim and the corresponding authenticated exhibits, Claimant's memorandum dated January 17, 2017, Claimant's testimony provided at the January 23, 2017 hearing, the fact that Respondent took no position on Claimant's request for expungement, the Customer's roughly 140 page document dated November 15, 2016, the Customer's subsequent submissions dated November 28, 2016, January 6, 2017, and January 10, 2017, and the Customer's testimony under oath at the hearings on November 16, 2016, and January 23, 2017.

The Panel also reviewed Claimant's BrokerCheck® Report.

The Panel has 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 expungement hearings, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

A majority of the Panel recommends the expungement of all references to CRD Occurrence Number [REDACTED] from Claimant [REDACTED] (CRD# [REDACTED]) registration records maintained by the CRD, with the understanding that pursuant to Notice to Members 04-16, Claimant [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code of Arbitration Procedure ("Code"), the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

A majority of the Panel has made the above Rule 2080 finding based on the following reasons:

The issues raised by the Customer included suitability, poor investment advice and failure to follow instructions. Specifically, the Customer did not want to sell the stock she inherited from her father and she did not want to lose any money. While she was unhappy because she lost money when she sold investments during the bottom of the market during the dot com bust against the advice of Claimant and two other associated persons, there was no wrongdoing on the part of Claimant. He testified he would not have accepted her as a client if she had told him she did not want to lose any money. He advised her to sell the stocks and invest in mutual funds for diversification. In the questionnaire she completed, she stated she was willing to accept moderate risk. The mutual funds recommended were suitable and Claimant only purchased mutual funds that were approved by the Customer.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$ 1,575.00
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*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### **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. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	= \$ 1,900.00
Member Process Fee	= \$ 3,750.00



**ARBITRATION PANEL**

Anita Rae Shapiro	-	Public Arbitrator, Presiding Chairperson
Samuel L. McClaren	-	Public Arbitrator
Tausha C. Riley	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

**Concurring Arbitrators' Signatures**

Anita Rae Shapiro  
Anita Rae Shapiro  
Public Arbitrator, Presiding Chairperson

Feb. 17, 2017  
Signature Date

\_\_\_\_\_  
Tausha C. Riley  
Non-Public Arbitrator

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

**Dissenting Arbitrator's Signature**

I would deny expungement.

\_\_\_\_\_  
Samuel L. McClaren  
Public Arbitrator

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

February 23, 2017  
Date of Service (For FINRA Office of Dispute Resolution office use only)

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2/17/2017  
Signature Date

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