

[Back](#)[Search All Issues](#)[Contents](#)

BNA, Inc.

# Daily Labor<sup>®</sup>

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Page A-2

## News

### Arbitration

#### A.G. Edwards Pays Over \$1.25 Million To Former Manager With Bipolar Disorder

Brokerage firm A.G. Edwards & Sons Inc. July 17 paid a former branch manager more than \$1.25 million in compliance with a June 26 arbitration award in his favor on claims stemming from his demotion and constructive discharge following medical leave for treatment of his bipolar disorder, according to the manager's attorney (*A.G. Edwards & Sons Inc.*, NASD Dispute Resolution, No. 04-06092, *arbitration award 6/26/06*).

Donald Allen, who resigned from the company in October 2001, brought claims for disability discrimination in violation of the Americans with Disabilities Act and North Carolina's Equal Employment Practices Act, violation of the Family and Medical Leave Act, violation of public policy, breach of contract, negligent infliction of emotional distress, and tortious interference with business relations.

The arbitration panel made up of Zeb E. Barnhardt, William H. Malloy, and Kenneth Hoffner awarded Allen \$340,000 in compensatory damages, \$340,000 in liquidated damages, plus interest of approximately \$257,000, as well as \$310,000 in attorneys' fees and costs and \$7,500 in sanctions for discovery abuse by A.G. Edwards. The arbitration panel directed the payment of arbitration fees totaling \$22,200 from Allen and \$31,200 from A.G. Edwards.

"We strongly disagree with the panel's decision but are pleased to put the matter behind us," a company representative said July 27.

The arbitration was conducted over 16 days from January to May of this year by NASD Dispute Resolution in accordance with the NASD code of arbitration procedure. NASD, formerly known as the National Association of Securities Dealers, is the primary self-regulatory organization for the securities industry. A.G. Edwards is a member of NASD.

#### Allen Was Branch Manager for 12 Years

According to Allen's statement of claim in arbitration, he joined A.G. Edwards in 1989 as branch manager of the Charlotte, N.C., office and signed an investment broker agreement requiring him to arbitrate all employment disputes before the New York Stock Exchange or NASD. Allen said that he was among the top 2 percent of producers nationwide and that his branch was the top revenue generator in a group including 25 other branches.

Allen had been diagnosed with bipolar disorder in the early 1980s but began experiencing more debilitating symptoms in late 2000 and early 2001. He took a medical leave of absence from late May to early June 2001. Although Allen's doctor released him to return to work with no restrictions, A.G. Edwards did not let him serve as branch manager and instead made him a financial consultant, which resulted in a substantial drop in income.

Allen said he was repeatedly rebuffed in his attempts to discuss returning to the position of branch manager and possible accommodations. A regional manager allegedly told Allen he


would not allow him to return to his previous job until the manager found that he had recovered. The regional manager also allegedly told Allen's attorney that Allen should not have come back to work at all and that the regional manager did not believe that Allen's condition would allow him to do a good job as a manager.

According to Allen's statement of claim, he repeatedly complained to higher management during 2001 about company practices that he believed were unethical, negligent, or violated federal or state securities laws or regulations and the best interests of the clients. After his return to work, co-workers shunned him and said they had been instructed not to talk to him, Allen said. He resigned on Oct. 25, 2001, after being told that he was permanently demoted.

Allen sued the company in a North Carolina court in April 2003, arguing that the arbitration agreement was unenforceable. A.G. Edwards then removed the case to the U.S. District Court for the Western District of North Carolina, which in July 2004 granted the company's motion to compel arbitration.

In his disability discrimination claims, Allen alleged that he was demoted and constructively discharged because of an actual disability or because he was regarded as disabled and that A.G. Edwards refused to provide reasonable accommodation. Allen also claimed that the company violated the FMLA by failing to restore him to his branch manager position or a substantially equivalent position and by retaliating against him for taking medical leave.

Allen claimed retaliation in violation of public policy stemming from his complaints about the company's allegedly unethical or illegal practices. He also claimed that A.G. Edwards breached an agreement to compensate him for his loss of income stemming from the company's decision to relocate several of Allen's top-producing brokers from the Charlotte office to two new offices in North Carolina. Allen also contended that the company tortiously interfered with his business relations by inducing many of his clients not to contact him after his departure from A.G. Edwards.

Julie H. Fosbinder and Joshua R. Van Kampen of the Fosbinder Law Offices in Charlotte represented Allen. Nuviah Shirazi and Nancy Tayborn with A.G. Edwards in St. Louis and Ingrid Blackwelder Erwin of Jackson Lewis in Greenville, S.C., represented the company. 

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 [Back](#)

 [Search All Issues](#)

 [Contents](#)