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**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Michael Sean Cain

Case Number: 06-05187

Name of the Respondent  
Wachovia Securities, LLC, as Surviving Entity  
by Merger with A. G. Edwards & Sons, Inc.

Hearing Site: Atlanta, Georgia

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Nature of the Dispute: Associated Person vs. Member.

**REPRESENTATION OF PARTIES**

For Michael Sean Cain, hereinafter referred to as "Claimant": Raymond L. Moss, Esq., Sims, Moss, Kline & Davis, LLP, Atlanta, Georgia.

For Wachovia Securities, LLC, as Surviving Entity by Merger with A.G. Edwards & Sons, Inc., hereinafter referred to as "Respondent": James C. Browning, Jr., Litigation Counsel, A. G. Edwards & Sons, Inc., St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: December 1, 2006.

Claimant signed the Uniform Submission Agreement [reflecting A. G. Edwards, Inc. as Respondent]: December 1, 2006.

Claimant signed the Uniform Submission Agreement [reflecting Wachovia Securities, LLC as Surviving Entity by Merger with A.G. Edwards & Sons, Inc. as Respondent]: April 28, 2008.

Motion to Dismiss and Answer filed by Respondent on or about: January 29, 2007.

Respondent signed the Uniform Submission Agreement [reflecting A. G. Edwards, Inc. as Respondent]: January 29, 2007.

Respondent signed the Uniform Submission Agreement [reflecting Wachovia Securities, LLC, as Surviving Entity by Merger with A.G. Edwards & Sons, Inc. as Respondent]: April 24, 2008.

Motion for Leave to Amend Statement of Answer and Amended Statement of Answer filed by Respondent on or about: November 27, 2007.

Response to Respondent's Motion for Leave to Amend Statement of Answer filed by Claimant on or about: November 27, 2007.

Motion for Leave to File Amended Statement of Claim, Amended Statement of Claim and Memorandum in Support thereof filed by Claimant on or about: November 27, 2007.

Objection to Claimant's Motion for Leave to File Amended Statement of Claim filed by

FINRA Dispute Resolution  
Arbitration No. 06-05187  
Award Page 2

Respondent on or about: November 29, 2007.

Motion to Amend Name of Party and Memorandum in Support thereof filed by Claimant on or about: April 18, 2008.

Response to Motion to Amend Name of Party filed by Respondent on or about: April 21, 2008.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) contractual and statutory indemnification, 2) breach of fiduciary duty; 3) negligence; and, 4) violation of controlling state bar and related ethics rules. The causes of action relate to attorneys' fees incurred by Claimant in connection with a separate arbitration proceeding (the "Proceeding") stemming from a customer dispute that arose when Claimant was employed by Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

**RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in an amount in excess of \$300,000.00, representing attorneys' fees and expenses incurred in the Proceeding; 2) pre-judgment interest at the rate of seven percent (7%) pursuant to O.C.G.A. § 7-4-2; 3) post-judgment interest at the rate of twelve percent (12%) pursuant to, among other things, O.C.G.A. § 7-4-12; 4) attorneys' fees and expenses; and, 5) punitive damages pursuant to, among other things, O.C.G.A. § 51-12-5.1(c) in an amount deemed just and proper by the Panel.

Respondent requested: 1) a dismissal with prejudice of the Statement of Claim, as amended, in its entirety; 2) costs; and, 3) any other relief the Panel deemed appropriate.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent's Statement of Answer contained a Motion to Dismiss in which Respondent requested that the Panel dismiss the claim on the pleadings. Therein, Respondent asserted, among other things, that Claimant has pleaded no basis upon which he can recover attorneys' fees. The Panel determined to conduct an evidentiary hearing and proceeded to schedule hearing dates with the parties during the initial pre-hearing conference conducted on April 10, 2007.

On or about November 30, 2007, the Panel issued Orders which, among other things, deferred ruling on the parties' respective motions to amend their pleadings until the outset of the evidentiary hearing. Following an executive session, the Panel determined at the outset of the evidentiary hearing on December 4, 2007, to grant the parties' respective motions to amend their pleadings.

FINRA Dispute Resolution  
 Arbitration No. 06-05187  
Award Page 3

Claimant filed an unopposed motion to modify the style of the case to reflect Respondent as "Wachovia Securities, LLC, as Surviving Entity by Merger with A.G. Edwards & Sons, Inc." instead of "A.G. Edwards & Sons, Inc." On or about April 23, 2008, the Panel issued an Order which granted Claimant's motion and directed the parties to file new Uniform Submission Agreements reflecting the change.

The parties have agreed that the Award in this matter may be entered 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:

Respondent is liable for partial contractual indemnification under the By-Laws of A. G. Edwards, Inc. in connection with the Proceeding, as well as a portion of the attorneys' fees incurred in this arbitration proceeding pursuant to O.C.G.A. § 13-6-11. Accordingly, Respondent shall reimburse Claimant the sum of \$160,000.00, pre-judgment interest specifically excluded.

Any and all relief not specifically addressed herein, including Claimant's request for punitive damages, is denied.

**FEES**

Pursuant to the Code of Arbitration Procedure (the "Code"), the following fees are assessed:

**Filing Fees**

FINRA Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

|                          |             |
|--------------------------|-------------|
| Initial claim filing fee | = \$ 300.00 |
|--------------------------|-------------|

**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. Respondent is a party to this dispute and is a member firm.

Accordingly, the following fees were assessed:

|                            |                     |
|----------------------------|---------------------|
| Member surcharge           | = \$1,700.00        |
| Pre-hearing process fee    | = \$ 750.00         |
| <u>Hearing process fee</u> | <u>= \$2,750.00</u> |
| Total Member Fees          | = \$5,200.00        |

FINRA Dispute Resolution  
 Arbitration No. 06-05187  
Award Page 4

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred during this proceeding.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred during this proceeding.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred during this proceeding.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery related motion on the papers or a contested motion for the issuance of subpoenas. A 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:

|   |            |           |
|---|------------|-----------|
| One (1) Pre-hearing session with a single arbitrator @ \$450.00/session | = \$       | 450.00    |
| Pre-hearing conference: October 2, 2007                                 | 1 session  |           |
| Two (2) Pre-hearing sessions with the Panel @ \$1,125.00/session        | = \$       | 2,250.00  |
| Pre-hearing conferences: April 10, 2007                                 | 1 session  |           |
| August 30, 2007   | 1 session  |           |
| Sixteen (16) Hearing sessions with the Panel @ \$1,125.00/session       | = \$       | 18,000.00 |
| Hearing Dates: December 4, 2007   | 3 sessions |           |
| December 5 2007   | 3 sessions |           |
| December 6, 2007  | 3 sessions |           |
| December 7, 2007  | 2 sessions |           |
| April 29, 2008  | 2 sessions |           |
| April 30, 2008  | 3 sessions |           |

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Total Forum Fees = \$20,700.00

FINRA Dispute Resolution  
 Arbitration No. 06-05187  
Award Page 5

The Panel has assessed \$10,350.00 of the forum fees to Claimant.

The Panel has assessed \$10,350.00 of the forum fees to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimant is solely liable for:

|  |                      |
|--|----------------------|
| Initial Filing Fee                         | = \$ 300.00          |
| Forum Fees                                 | = \$ 10,350.00       |
| <hr/> Total Fees                           | <hr/> = \$ 10,650.00 |
| Less payments                              | = \$ 1,425.00        |
| <hr/> Balance Due FINRA Dispute Resolution | <hr/> = \$ 9,225.00  |

Respondent is solely liable for:

|  |                      |
|--|----------------------|
| Member Fees                                | = \$ 5,200.00        |
| Forum Fees                                 | = \$ 10,350.00       |
| <hr/> Total Fees                           | <hr/> = \$ 15,550.00 |
| Less payments                              | = \$ 5,200.00        |
| <hr/> Balance Due FINRA Dispute Resolution | <hr/> = \$ 10,350.00 |

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

|                              |   |   |
|------------------------------|---|---|
| <i>Richard V. McGalliard</i> | - | <i>Non-Public Arbitrator, Presiding Chairperson</i> |
| <i>Marian Cover Dockery</i>  | - | <i>Non-Public Arbitrator</i>                        |
| <i>Alfred Lee Dingler</i>    | - | <i>Non-Public Arbitrator</i>                        |

FINRA Dispute Resolution  
Arbitration No. 06-05187  
Award Page 6

**Concurring Arbitrators' Signatures**

/s/

5/16/08

\_\_\_\_\_  
Richard V. McGalliard  
Non-Public Arbitrator, Presiding Chairperson

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

/s/

5/15/08

\_\_\_\_\_  
Marian Cover Dockery  
Non-Public Arbitrator

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

/s/

5/16/08

\_\_\_\_\_  
Alfred Lee Dingler  
Non-Public Arbitrator

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

May 16, 2008

\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution use only)

May. 16. 2008 10:38AM

No. 1238 P. 8/8

FINRA Dispute Resolution  
Arbitration No. 08-05187  
Award Page 6

Concerning Arbitrators' Signatures

Richard V. McGalliard  
Richard V. McGalliard  
Non-Public Arbitrator, Presiding Chairperson

5-16-08  
Signature Date

Marian Cover Dockery  
Marian Cover Dockery  
Non-Public Arbitrator

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

Alfred Lee Dingle  
Alfred Lee Dingle  
Non-Public Arbitrator

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

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Date of Service (For FINRA Dispute Resolution use only)

FINRA Dispute Resolution  
Arbitration No. 06-05187  
Award Page 6

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Richard V. McGalliard  
Non-Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Marian Cover Dockery  
Non-Public Arbitrator

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

\_\_\_\_\_  
Alfred Lee Dingler  
Non-Public Arbitrator

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

\_\_\_\_\_  
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May. 16. 2008 8:30AM

FINRA Dispute Resolution  
Arbitration No. 06-05187  
Award Page 6

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Richard V. McGalliard  
Non-Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Marian Cover Dockery  
Non-Public Arbitrator

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

  
\_\_\_\_\_  
Alfred Lee Dingler  
Non-Public Arbitrator

\_\_\_\_\_  
05 | 16 | 08  
Signature Date

\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution use only)