

**Award**  
**NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant  
Carol Cohen

Case Number: 03-03797

Names of the Respondents  
A.G. Edwards & Sons, Inc.  
Michael Sean Cain

Hearing Site: Atlanta, Georgia

Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Carol Cohen, hereinafter referred to as "Claimant": Robert H. Putnam, Jr., Esq., Atlanta, Georgia.

For Respondent A.G. Edwards & Sons, Inc. ("Edwards"): William S. Port, Vice President and Litigation Counsel, Edwards, St. Louis, Missouri.

For Respondent Michael Sean Cain ("Cain"): Raymond L. Moss, Esq., Sims Moss Kline & Davis LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: May 23, 2003.

Claimant signed the Uniform Submission Agreement: April 24, 2003.

Statement of Answer filed by Respondents on or about: July 23, 2003.

Respondent Edwards signed the Uniform Submission Agreement: June 23, 2003.

Respondent Cain signed the Uniform Submission Agreement: June 25, 2003.

Attorney Affirmation on Behalf of Michael Sean Cain in Support of Application for Attorney's Fees and to Have NASD Fees Assessed Against Claimant filed on or about: December 28, 2004.  
Respondent Edwards' Motion for Litigation Costs and Expenses filed on or about: December 30, 2004.

Claimant's Brief in Opposition to Respondents' Motion for Attorney's Fees, Expenses and Forum Fees filed on or about: January 28, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: securities and common law fraud; breach of fiduciary duty; and, breach of contract. The causes of action relate to the purchase and sale of shares of Citrix, Cisco, EMC, Sycamore Networks, Vialink, GE, Home Depot, Nokia, Lucent and other unspecified securities products in Claimant's account.

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

### **RELIEF REQUESTED**

Claimant requested her losses exceeding \$390,000.00; punitive damages; pre-award interest; post-award interest; and, attorneys' fees and expenses

Respondents requested that the arbitration panel issue an order dismissing Claimant's Statement in its entirety, awarding Respondents their costs associated with the defense of this matter, including reasonable attorneys' fees, and such other and further relief as the panel deemed just and proper.

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

At the conclusion of Claimant's case, Respondents made a motion to dismiss which was granted by the arbitration panel. In addition, Respondents requested an expungement of all references to this matter from Respondent Cain's NASD Central Registration Depository ("CRD") record.

On or about February 7, 2005, the arbitration panel issued an order which denied Respondent Edwards' Motion for Litigation Costs and Expenses. In addition, said order granted Respondent Cain's Application for Attorneys' Fees and to Have NASD Fees Assessed Against Claimant with respect to NASD fees relating to filings, holding of hearing sessions and holding of pre-hearing sessions and denied said motion with respect to attorneys' fees and any other out-of-pocket or other expenses.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

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

Claimant's claims are denied in their entirety.

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

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Cain's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Cain must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **FEES**

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

assessed:

**Filing Fees**

NASD 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(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 = \$1,700.00

Pre-hearing process fee = \$750.00

Hearing process fee = \$2,750.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

**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 in this matter.

**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 in this matter.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

Seven (7) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$3,150.00

Pre-hearing conferences:

June 8, 2004	2 sessions
July 15, 2004	2 sessions
August 11, 2004	1 session
October 4, 2004	1 session
November 10, 2004	1 session

One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: December 12, 2003 1 session	
Nine (9) Hearing sessions @ \$1,125.00	= \$10,125.00
Hearing Dates: December 13, 2004 2 sessions	
December 14, 2004 2 sessions	
December 15, 2004 2 sessions	
December 16, 2004 2 sessions	
December 17, 2004 1 session	
Total Forum Fees	= \$14,400.00

The Panel has assessed the total forum fees of \$14,400.00 to Claimant.

**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 are 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 in this matter.

**FEE SUMMARY**

Claimant is solely liable for:

Initial Filing Fee	= \$300.00
Forum Fees	= \$14,400.00
Total Fees	= \$14,700.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$13,275.00

Respondent Edwards is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$0.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Sonia Fishkin, Esq.	-	Public Arbitrator, Presiding Chair
Lita S. Menkin, JD	-	Public Arbitrator
Merle I. Hoch	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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

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

\_\_\_\_\_/S/\_\_\_\_\_  
Lita S. Menkin, JD  
Public Arbitrator

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

\_\_\_\_\_/S/\_\_\_\_\_  
Merle I. Hoch  
Non-Public Arbitrator

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

February 10, 2005

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Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 03-03797

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ARBITRATION PANEL

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Public Arbitrator, Presiding Chair

Lita S. Menkin, JD


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Public Arbitrator

Merle L. Hoch

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Non-Public Arbitrator

Concurring Arbitrators' Signatures

Sonia Fishkin, Esq.

Public Arbitrator, Presiding Chair

Feb. 9, 2005

Signature Date

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Lita S. Menkin, JD

Public Arbitrator

\_\_\_\_\_  
Signature Date\_\_\_\_\_  
Merle L. Hoch

Non-Public Arbitrator

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Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Sonia Fishkin, Esq.

Public Arbitrator, Presiding Chair



Lita S. Menkin, JD

Public Arbitrator

Signature Date

2/8/05

Signature Date

Merle I. Hoch

Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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Merle I. Hoch

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- Public Arbitrator

- Non-Public Arbitrator

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2-8-05  
Signature Date

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