

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Wilbanks Securities, Inc.

and

Case Number: 04-08112

Hearing Site: Oklahoma City, Oklahoma

Name of Respondent

Donald Ray McFarland

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**NATURE OF DISPUTE**

Member Firm v. Associated Person

**REPRESENTATION OF PARTIES**

Wilbanks Securities, Inc. ("**Wilbanks**" or "**Claimant**") was represented by Stephen A. Zrenda, Jr., Esq., Oklahoma City, Oklahoma.

Donald Ray McFarland ("**McFarland**" or "**Respondent**") was represented by Lawn B. Gardner, Esq., DeBee Gilchrist, P.C., Oklahoma City, Oklahoma.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 24, 2004. The Submission Agreement of Claimant, Wilbanks Securities, Inc., was signed on or about November 22, 2004. Claimant's Reply to Respondent's Counterclaim was filed on or about February 8, 2005.

The Statement of Answer and Counterclaim was filed by Respondent, Donald Ray McFarland, on or about February 16, 2005. The Submission Agreement of Respondent, Donald Ray McFarland, was signed on or about December 31, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; breach of good faith; selling away; tortious interference with business; and common law fraud. Claimant alleged that Respondent failed to honor the Independent Contractor Agreement ("ICA") in which Respondent agreed to be a registered sales representative with Claimant and sell all insurance products through it. Claimant also alleged that Respondent was in breach of

contract by processing sales orders (for fixed insurance products and other products), directly with insurance companies and other entities and not through Wilbanks or its affiliate, Associates Diversified Brokerage, Inc. ("Assoc."). Claimant further alleged that McFarland utilized and recruited other brokers and dealers affiliated with Claimant to process sales orders directly with insurance companies entities other than Wilbanks or Assoc.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted defenses including the following: Respondent earned commissions from the sales of insurance and securities products of approximately \$150,000.00, which was never paid to him; the ICA provided that McFarland was to produce fixed insurance business through Associates, the ICA applied only to the production of fixed insurance business generated from leads provided by representatives of Wilbanks and not insurance business generated by McFarland's existing practice and any other affiliations he had with other insurance product sellers, were not included.

In his Counterclaim, Respondent alleged that Claimant filed defamatory and non-reportable events on his form U-5 in an attempt to damage his future business. He also alleged that Claimant confiscated commissions owed to Respondent after his termination on September 23, 2004 and illegally fined him \$20,000.00.

Unless specifically admitted in its Response to the Counterclaim, Claimant denied the allegations made in the Counterclaim.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$50,000.00 in compensatory damages, \$100,000.00 in treble damages, \$200,000.00 in punitive damages, interest, cost and attorneys' fees, dismissal of the Counterclaim and other relief the Panel deemed just and proper.

In his Answer and Counterclaim, Respondent requested an award of \$150,000.00 for payment of outstanding commissions, trails and renewals, \$20,000.00 for reimbursement of the fine imposed by Claimant and \$100,00.00 for loss of income. Respondent requested \$340,000.00 in treble damages, punitive damages, interest, costs and attorneys' fees and other relief the Panel deemed just and proper. Respondent also requested that the Panel enter an order recommending expungement of his CRD records.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties

have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

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

- 1) Claimant's claims, each and all, have been denied and dismissed in their entirety with prejudice;
- 2) Claimant, Wilbanks Securities, Inc., is liable for and shall pay to Respondent, Donald Ray McFarland, the sum of \$141,637.00 in compensatory damages, broken down as follows:

\$70,656.00 for securities commissions withheld;  
\$37,898.00 for fixed insurance commissions withheld;  
\$13,083.00 for future insurance renewals; and  
\$20,000.00 for fines relating more to insurance business  
than securities business;

- 3) Claimant, Wilbanks Securities, Inc., is liable for and shall pay to Respondent, Donald Ray McFarland, the sum of \$129,709.00 in costs, broken down as follows:

\$17,000.00 in expert witness fees;  
\$100,000.00 in attorneys' fees; and  
\$12,709.00 in expenses;

- 4) The panel recommends the expungement of paragraph 3 of the Form U5 Internal Review Disclosure Reporting Pages (DRPs) dated September 23, 2004, November 12, 2004, and March 24, 2005 from Donald McFarland's registration records maintained by the NASD Central Registration Depository ("CRD") based on the defamatory nature of the information. The panel orders that the language be changed in paragraph 3 of the same filings to the following:

Mr. McFarland resigned at our request due to problems relating to the sale of insurance products by him and several of our employees without involving our insurance subsidiary as requested.

The panel recommends the expungement of paragraph 4 of the Form U5 Termination DRPs dated September 23, 2004, October 12, 2004, and March 24, 2005 from Donald McFarland's registration records maintained by the NASD Central

Registration Depository ("CRD") based on the defamatory nature of the information. The panel orders that the language be changed in paragraph 4 of the same filings to the following:

Mr. McFarland resigned at our request due to problems relating to the sale of insurance products by him and several of our employees without involving our insurance subsidiary as requested.

The panel recommends the expungement of paragraph 6 of the Form U4 Termination DRPs dated September 12, 2004, October 12, 2004, and March 24, 2005 from Donald McFarland's registration records maintained by the NASD Central Registration Depository ("CRD") based on the defamatory nature of the information. The panel orders that the language be changed in paragraph 6 of the same filings to the following:

Any problems relating to his activities as a securities broker were minor and not reported at the time they occurred.

The panel orders that the Reason for Termination and Termination Comment are to remain the same.

- 5) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial claim filing fee	= \$1,000.00
Counterclaim filing fee	= \$ 375.00

#### **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. In this matter, the member firm is Wilbanks Securities, Inc.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00

Hearing process fee = \$4,000.00

### **Adjournment Fees**

Adjournments granted during these proceedings:

October 4-6, 2006, adjournment requested by Claimant = \$ 1,125.00

### **Forum Fees and Assessments**

The Arbitration Panel assesses 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:

One (1) Pre-hearing session with Panel x \$1,200.00 = \$1,200.00  
Pre-hearing conference: April 6, 2005 1 session

Six (6) Hearing sessions x \$1,200.00 = \$7,200.00  
Hearing Dates: April 11, 2006 2 sessions  
April 12, 2006 2 sessions  
April 13, 2006 2 sessions

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Total Forum Fees = \$8,400.00

The Arbitration Panel has assessed \$8,400.00 of the forum fees to Wilbanks Securities, Inc.

### **Fee Summary**

Claimant, Wilbanks Securities, Inc., is liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 6,450.00
Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 8,400.00
<u>Total Fees</u>	<u>= \$16,975.00</u>
<u>Less payments</u>	<u>= \$ 8,075.00</u>
Balance Due NASD Dispute Resolution	= \$ 8,900.00

Respondent, Donald Ray McFarland, is liable for:

Counterclaim Filing Fee	= \$ 375.00
<u>Total Fees</u>	<u>= \$ 375.00</u>
<u>Less payments</u>	<u>= \$ 1,575.00</u>

Refund due to Respondent

= \$ 1,200.00

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

**ARBITRATION PANEL**

Robert S. Garrett, Esq. – Public Arbitrator, Presiding Chair  
Peter B. Bradford, JD - Public Arbitrator  
Joel Held, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert S. Garrett, Esq.  
Robert S. Garrett, Esq.  
Public Arbitrator, Presiding Chair

05/18/06  
Signature Date

/s/ Peter B. Bradford, JD  
Peter B. Bradford, JD  
Public Arbitrator

05/17/06  
Signature Date

/s/ Joel Held, Esq.  
Joel Held, Esq.  
Non-Public Arbitrator

05/18/06  
Signature Date

05/18/06  
Date of Service (For NASD office use only)

Refund due to Respondent

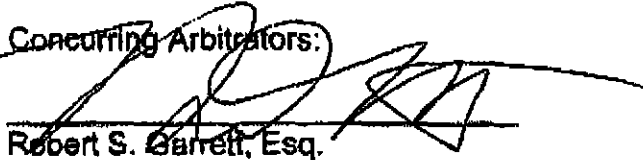
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Concurring Arbitrators:

  
Robert S. Garrett, Esq.  
Public Arbitrator, Presiding Chair

18 May 06  
Signature Date

  
Peter B. Bradford, JD  
Public Arbitrator

  
Signature Date

  
Joel Held, Esq.  
Non-Public Arbitrator

  
Signature Date

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Public Arbitrator

5-17-06  
Signature Date

Joel Held, Esq.  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only) 5-17-06



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Public Arbitrator, Presiding Chair

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Signature Date

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Peter B. Bradford, JD  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Joel Held, Esq.  
Non-Public Arbitrator

*May 18, 2006*  
\_\_\_\_\_  
Signature Date

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Date of Service (For NASD office use only)