

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 01-01364

Wachovia Securities, Inc.

Name of the Respondent

Hearing Site: Richmond, Virginia

Thomas E. Kenney and  
James H. Godfrey

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REPRESENTATION OF PARTIES

Claimant Wachovia Securities, Inc., hereinafter referred to as "Claimant", was represented by William C. Mayberry, Esq., Helms Mullis & Wicker, Charlotte, North Carolina.

Respondent Thomas E. Kenney ("Kenney") was represented by William J. Kenney, Esq., Attorney at Law, Washington, DC.

Respondent James H. Godfrey ("Godfrey") was represented by K. Dennis Sisk, Esq., McKinnon & Sisk, PLC, Richmond, Virginia.

CASE INFORMATION

Statement of Claim filed on March 12, 2001.

Pamela P. Warnement, Senior Vice President and Deputy General Counsel, executed Claimant's Uniform Submission Agreement on March 16, 2001.

Statement of Answer and Motion to Dismiss filed by Respondent Godfrey on May 15, 2001.

Statement of Answer filed by Respondent Kenney on May 15, 2001.

Respondents did not file Uniform Submission Agreements with NASD Dispute Resolution.

Respondent Godfrey filed a Motion to Dismiss or to Sever on July 19, 2001.

Claimant's Opposition to Motion to Dismiss or to Sever was filed on August 3, 2001.

Respondent Kenney filed a Motion to Dismiss on October 4, 2002.

Respondent Kenney filed a Motion to Postpone on October 4, 2002.

CASE SUMMARY

Claimant asserted causes of action for breach of contract. The causes of action relate to promissory notes the Claimant alleges Respondents had a duty to and failed to repay after they terminated their employment with Claimant.

Unless specifically admitted in his Answer, Respondent Kenney denied the allegations made in the Statement of Claim.

Unless specifically admitted in his Answer, Respondent Godfrey denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's successor in interest released Respondent from the promissory note in question; breach of contract; Claimant lacks standing to enforce the agreement; Claimant's claim was filed in bad faith; and, Claimant is not a holder in due course.

#### RELIEF REQUESTED

Claimant in its Statement of Claim requested:

Compensatory Damages	\$ 50,546.90
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent Kenney in his Statement of Answer requested that the claim be dismissed.

Respondent Godfrey in his Statement of Answer and Motion to Dismiss requested the following: that Claimant's claim be denied in its entirety; that Claimant pay Respondent Godfrey his reasonable attorney fees and the cost of these proceedings; and, that the Panel grant Respondent Godfrey such other and further relief, including affirmative relief, as the Panel deems just and proper.

#### OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution, properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

The Panel denied Respondent Godfrey's Motion to Dismiss.

The Panel denied Respondent Godfrey's Motions to Sever.

The Panel denied Respondent Kenney's Motion to Postpone the October 14-16, 2002 hearing sessions.

The Panel denied Respondent Kenney's Motion to Dismiss.

#### AWARD

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

1. Respondent Kenney is liable to and shall pay to Claimant compensatory damages in the amount of \$38,171.25, plus interest. The rate of interest shall be calculated by determining the average prime rate as quoted in the Wall Street Journal on the date of Respondent Kenney's termination and on the date this award is served. Interest shall be calculated on a simple basis and shall accrue from the date this Award is served until the date of payment in full;
2. Respondent Godfrey is liable to and shall pay to Claimant compensatory damages in the amount of \$12,337.56, plus interest. The rate of interest shall be calculated by determining the average prime rate as quoted in the Wall Street Journal on the date of Respondent Godfrey's termination and on the date this award is served. Interest shall be calculated on a simple basis and shall accrue from the date this Award is served until the date of payment in full;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
4. Any and all relief not specifically addressed herein is denied in its entirety.

#### FEES

Pursuant to 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	= \$ 1,000.00
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##### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Claimant is a party.

Member surcharge	= \$ 1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 1,500.00
Total Member Fees	= \$ 3,100.00

##### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

March 18-20, 2002 adjournment by Respondent Godfrey	= \$ 750.00
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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:

One (1) Pre-hearing session with Panel @ \$750.00 = fee waived  
 Pre-hearing conference: October 9, 2001

One (1) Pre-hearing session with Panel @ \$ 750.00 = \$ 750.00  
 Pre-hearing conference: November 6, 2001 1 session

Seven (7) Hearing sessions @ \$ 750.00 = \$ 5,250.00  
 Hearing Dates: October 14, 2002 2 sessions  
 October 15, 2002 3 sessions  
 October 16, 2002 2 session

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Total Forum Fees = \$ 6,000.00

1. The Panel has assessed \$3,000.00 of the forum fees to Claimant.
2. The Panel has assessed \$1,500.00 of the forum fees to Respondent Kenney.
3. The Panel has assessed \$1,500.00 of the forum fees to Respondent Godfrey.

FEE SUMMARY

1. Claimant is assessed the following fees:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,100.00
<u>Forum Fees</u>	<u>= \$ 3,000.00</u>
Total Fees	= \$ 7,100.00
<u>Less payments</u>	<u>= \$ 4,850.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,250.00

2. Respondent Godfrey is assessed the following fees:

Adjournment Fee	= \$ 750.00
<u>Forum Fees</u>	<u>= \$ 1,500.00</u>
Total Fees	= \$ 2,250.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,250.00

3. Respondent Kenney is assessed the following fees:

Forum Fees	= \$ 1,500.00
Total Fees	= \$ 1,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,500.00

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

ARBITRATION PANEL

C. Gregory Ellison	- Non-Public Arbitrator, Presiding Chairperson
Glenn H. Catalono	- Non-Public Arbitrator, Panelist
William P. Borduin	- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



C. Gregory Ellison  
Non-Public Arbitrator, Presiding Chairperson

12-17-02

Signature Date

Glenn H. Catalano  
Non-Public Arbitrator, Panelist

Signature Date

William P. Borduin  
Non-Public Arbitrator, Panelist

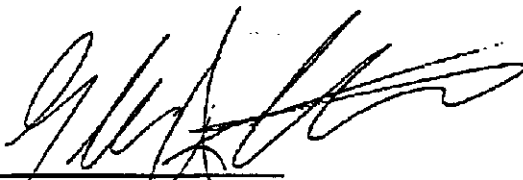
Signature Date

December 23, 2002  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

C. Gregory Ellison  
Non-Public Arbitrator, Presiding Chairperson

Signature Date

  
Glenn H. Catalano  
Non-Public Arbitrator, Panelist

12/17/02  
Signature Date

William P. Borduin  
Non-Public Arbitrator, Panelist

Signature Date

December 23, 2002  
Date of Services


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