

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

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In the Matter of the Arbitration Between

Name of Claimant

Lance Wise and Nancy Wise

and

02-04883  
Chicago, Illinois

Name of Respondents

Wachovia Securities, Inc.

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Nature of the Dispute: Customers vs. Member.

**REPRESENTATION OF PARTIES**

Lance Wise and Nancy Wise ("Claimants") were represented by Kenneth Ditkowsky, Esq., of Law Offices of Ditkowsky & Contorer, located in Chicago, Illinois.

Wachovia Securities, Inc. ("Respondent") or ("WSI") was represented by Andrew R. Park, Esq., of Wachovia Securities, Inc., located in Richmond, Virginia.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 20, 2002. Submission Agreement of Claimants was signed on October 4, 2002.

Statement of Answer and Motion to Dismiss was filed by Respondent on November 29, 2002. Submission Agreement of Respondent was filed on October 16, 2002.

Claimants filed a Response to the Motion to Dismiss on December 3, 2002.

Respondent filed a Reply to Claimants' Response to the Motion to Dismiss on April 1, 2003.

On October 28, 2003 Respondent filed a Motion for Summary Judgment.

On November 4, 2003 Respondent filed a Response to the Motion for Summary Judgment.

**CASE SUMMARY**

Claimants' alleged that Mr. Winters, an employee of First Union Securities Inc., n/k/a Wachovia Securities induced petitioners Lance Wise and Nancy Wise, who were customers of Respondent to invest in a "hedge fund" called Titan Fund 1 LP ("the fund"). On reliance upon the financial advice of Mr. Winters, the Claimants liquidated all of their positions at First Union. In further reliance upon Winter's financial advice, the Claimants subsequently directed First Union to complete the purchase

of the Titan Fund. Claimants allege that their actions were based on false information about the fund which was supplied to them by Mr. Winters. The fund subsequently went bankrupt and the Wises lost all the money invested in the fund.

Respondent denied the allegations set forth in the Statement of Claim. Respondent submitted the following affirmative defenses including but not limited to the following: before they allegedly invested in the fund, the Wises were on notice that Mr. Winters was no longer associated with WSI. The Wises cannot hold WSI legally accountable, under any theory of liability state; and, the claim for damages is due to entities or individuals over whom WSI did not have any control.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$181,663.00.

Respondent requested that the claims asserted against them be denied in its entirety and that they be awarded its costs and attorneys' fees.

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

Panel ordered a telephonic hearing to take place on April 28, 2004 on Respondents Motion for Summary Judgment in Lieu of the Arbitration hearing scheduled for April 27-29, 2004. On or about April 28, 2004 the Panel issued an order granting the Motion for Summary Judgment in favor of Respondents. On September 22, 2004, the Panel reconvened in order to discuss costs, attorneys fees and forum fees.

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 remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the telephonic hearing on the Motion for Summary Judgment the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' Lance and Nancy Wise claims against Wachovia Services are dismissed in their entirety with prejudice;
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice;

3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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 = \$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 event giving rise to the dispute. In this matter, the member firm is Wachovia Securities, Inc.

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

#### **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 arbitrator, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

3 Pre-hearing sessions the with Panel	x	1,125.00	\$	3,375.00
May 9, 2003	1	session		
January 16, 2003	1	session		
April 28, 2004	1	session		
Total Forum Fees			\$	<u>3,375.00</u>

The Arbitration Panel has assessed \$3,375.00 of the forum fees to Claimants, Lance Wise and Nancy Wise jointly and severally.

**Fee Summary**

Claimants Lance Wise and Nancy Wise, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	3,375.00
Total Fees	= \$	3,675.00
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	2,250.00

Respondent, Wachovia Services, Inc, shall be and hereby is liable for:

Member Fees	= \$	5,200.00
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	5,200.00
Balance Due NASD Dispute Resolution	= \$	.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Beatriz M. Olivera, Esq. - Public Arbitrator, Presiding Chair  
Elliot Leitner - Public Arbitrator  
Ronald C. Peters, CPA, CTA - Non-Public Arbitrator

Concurring Arbitrators:

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Beatriz M. Olivera, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Elliot Leitner  
Public Arbitrator

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Signature Date

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Ronald C. Peters, CPA, CTA  
Non-Public Arbitrator

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Signature Date

NASD Dispute Resolution

Arbitration No. 02-4883

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Date of Serve by NASD Dispute Resolution 10/15/04

## Fee Summary

**Claimants Lance Wise and Nancy Wise, shall be and hereby are jointly and severally liable for:**

<b>Balance Due NASD Dispute Resolution</b>	<b>= \$</b>	<b>2,250.00</b>
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**Respondent, Wachovia Services, Inc, shall be and hereby is liable for:**

Balance Due NASD Dispute Resolution	= \$	.00
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**All balances are due to NASD Dispute Resolution**

## ARBITRATION PANEL

**Beatriz M. Olivera, Esq. - Public Arbitrator, Presiding Chair**

**Elliot Leimer - Public Arbitrator**

**Ronald C. Peters, CPA, CTA - Non-Public Arbitrator**

**Concurring Arbitrators:**

Blatt M. Olivera

**Public Arbitrator, Presiding Chair**

Oct. 7, 2004

**Signature Date**

## Public Arbitrator

**Signature Date**

### Non-Public Arbitrator

**Signature Date**

NASD Dispute Resolution  
Arbitration No. 02-4883  
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**Fee Summary**

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Elliot Leitner - Public Arbitrator  
Ronald C. Peters, CPA, CTA - Non-Public Arbitrator

Concurring Arbitrators:

Beatriz M. Olivera, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Elliot Leitner  
Public Arbitrator

Signature Date

Ronald C. Peters, CPA, CTA  
Non-Public Arbitrator

Signature Date

10/5/04

TO AMY RESS, ESQ.

NASD Dispute Resolution  
Arbitration No. 02-4883  
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### ARBITRATION PANEL

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Elliot Leitner - Public Arbitrator  
Ronald C. Peters, CPA, CTA - Non-Public Arbitrator

Concurring Arbitrators:

Beatriz M. Olivera, Esq.  
Public Arbitrator, Presiding Chair

  
Elliot Leitner  
Public Arbitrator

Ronald C. Peters, CPA, CTA  
Non-Public Arbitrator

Signature Date

10-6-04  
Signature Date

Signature Date