

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Lester & Lois Gurdin,

Case Number:

02-05270

Claimants,

vs.

Wachovia Securities, Inc.  
Robert J. Hayes and John Doe  
(Robert J. Hayes' Supervisor)

Hearing Site:

Omaha, Nebraska

Respondents.

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Nature of Dispute: Customers vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Claimants Lester & Lois Gurdin, hereinafter referred to as "Claimants," were represented by Gail E. Boliver, Esq., with the Boliver Law Firm in Marshalltown, Iowa.

Respondents Wachovia Securities, Inc. and Robert J. Hayes, hereinafter referred to as "Respondents," were represented by Anne W. Larkin, Esq., with Wachovia Securities, Inc. in Richmond, Virginia.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 9, 2002.

The Claimant signed the Uniform Submission Agreement on or about September 17, 2002.

The Respondents' Joint Statement of Answer was filed on or about December 2, 2002

Respondent Wachovia Securities, Inc. signed the Uniform Submission Agreement on or about November 26, 2002.

Respondent Robert J. Hayes signed the Uniform Submission Agreement on or about November 21, 2002.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted various claims, including: breach of fiduciary duty, negligence, violations of Iowa Securities Acts, violations of NASD rules of supervision and suitability, misrepresentation, constructive fraud, negligent supervision and breach of contract. This claim involved the sale and management of high risk stocks, including volatile technology stocks, that were allegedly unsuitable for a retirement portfolio based on the advanced age of Claimants and their stated investment objectives of income and preservation of capital.

Respondents denied all liability to Claimants in the Statement of Answer. Respondents contended that Claimant's losses were caused by an overall market decline, and not due to any misconduct of Respondents. Contrary to the Statement of Claim, Respondents alleged that Claimants were knowledgeable investors with a net worth of \$2,500,000.00.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

Compensatory Damages:	\$1,000,000.00
Other Costs:	Unspecified
Attorneys' Fees:	Unspecified
Other Monetary Relief:	Unspecified

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

The parties 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 the NASD Dispute Resolution, Inc.

Claimants moved for Summary Judgment orally at hearing and the Panel denied them. Respondents moved for dismissal orally at hearing and the Panel denied them. Respondents also moved to dismiss John Doe (Mr. Hayes' Supervisor) orally at hearing. The Panel granted as there was no jurisdiction based on lack of service, identification or submittal to jurisdiction.

### **AWARD**

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

1. Claimants' claims, each and all, are denied and dismissed with prejudice;
2. The parties shall each bear their own attorney fees and other costs incurred in this matter;

3. Any and all relief not specifically granted herein is denied with prejudice.

**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	= \$ 375.00
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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 persons at the time of the events giving rise to the dispute. Wachovia Securities, Inc. is a member firm.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

**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 @ \$1,200	= \$ 1,200.00
Pre-hearing conference: March 27, 2003 for one (1) session	

One (1) Pre-hearing session with the Chairperson @ \$450	= \$ 450.00
Pre-hearing conference: October 2, 2003 for one (1) session	

Nine (9) hearing sessions with Panel @ \$1,200	= \$ 10,800.00
Hearing sessions:	
October 7, 2003 for two (2) sessions	
October 8, 2003 for two (2) sessions	
October 9, 2003 for three (3) sessions	
October 10, 2003 for two (2) sessions	

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Total Forum Fees	= \$ 12,450.00
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1. The Panel has assessed 50% of the forum fees in the amount of \$6,225.00 to Claimants, Lester and Lois Gurdin, jointly and severally.

2. The Panel has assessed 50% of the forum fees in the amount of \$6,225.00 to Respondents, Wachovia Securities, Inc. and Robert Hayes, jointly and severally.

**FEE SUMMARY**

Claimants Lester and Lois Gurdin are liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 6,225.00
Total Fees	= \$ 6,600.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 5,025.00

Respondent Wachovia Securities, Inc. is liable for:

Member Fees	= \$ 7,550.00
Total Fees	= \$ 7,550.00
Less payments	= \$ 7,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Wachovia Securities, Inc. and Robert Hayes are jointly and severally liable for:

Forum Fees	= \$ 6,225.00
Total Fees	= \$ 6,225.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 6,225.00

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

**ARBITRATION PANEL**

Sam R. Brower, Esq.- Public Arbitrator, Presiding Chairperson  
Eric T. Williams - Public Arbitrator  
Thomas J. Pleiss- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Sam R. Brower, Esq.

October 29, 2003

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Sam R. Brower, Esq.  
Public Arbitrator, Presiding Chairperson

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

/s/ Eric T. Williams

October 29, 2003

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Eric T. Williams  
Public Arbitrator

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

/s/ Thomas J. Pleiss

October 26, 2003

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Thomas J. Pleiss  
Non-Public Arbitrator

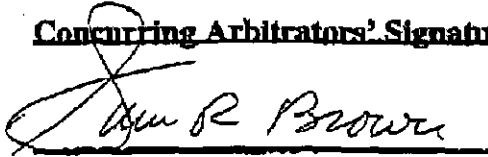
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October 30, 2003

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Date of Service (For NASD Dispute Resolution use only)

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Concurring Arbitrators' Signatures



Sam R. Brower Esq.  
Public Arbitrator, Presiding Chairperson

10/29/03

Signature Date

Eric T. Williams  
Public Arbitrator

Signature Date

Thomas J. Pleiss  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

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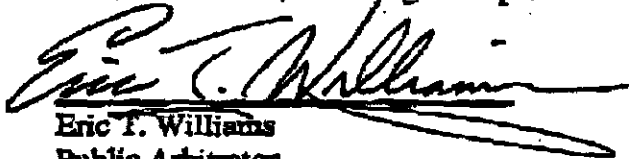
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Concurring Arbitrators' Signatures

\_\_\_\_\_  
Sam R. Brower Esq.  
Public Arbitrator, Presiding Chairperson

  
Eric F. Williams  
Public Arbitrator

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

29 October 2003  
Signature Date

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Thomas J. Pleiss  
Non-Public Arbitrator

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Signature Date

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Concurring Arbitrators' Signatures

\_\_\_\_\_  
Sam R. Brower Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Eric T. Williams  
Public Arbitrator

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

  
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Thomas J. Pleiss  
Non-Public Arbitrator

10/26/03  
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Signature Date

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Date of Service (For NASD Dispute Resolution use only)