

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

---

In the Matter of the Arbitration Between

Claimant  
Philip S. Almon

v.

02-05958  
Denver, Colorado

Respondents  
Wachovia Securities, LLC and John D. Simmons

---

Nature of Dispute: Associated Person v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Philip S. Almon ("**Claimant**") was represented by Otto K. Hilbert, II, Esq., of Robinson, Waters & O'Dorisio, P.C., Denver, Colorado.

Wachovia Securities, LLC ("**Wachovia**") was represented by William D. Nelson, Esq., and Vance Knapp, Esq., of Rothgerber Johnson & Lyons, LLP, Denver, Colorado.

John D. Simmons ("**Simmons**") was represented by James Miller, Esq. and Jake Matter, Esq. of Moye Giles LLP, Denver Colorado.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 1, 2002. Submission Agreement of Claimant was signed on or about September 9, 2002.

Claimant filed an Amended Statement of Claim on or about October 16, 2002.

A Joint Statement of Answer was filed by Respondents Wachovia Securities, LLC and John D. Simmons on or about December 4, 2002. Submission Agreement of Respondent Wachovia Securities, LLC was signed on or about December 5, 2002. Submission Agreement of Respondent John D. Simmons was signed on or about January 13, 2003.

Respondent Wachovia Securities, LLC filed a Motion to Dismiss on or about November 5, 2003. Claimant filed a Response to Wachovia's Motion to Dismiss on or about November 12, 2003.

### **CASE SUMMARY**

Claimant asserted causes of action including the following: violation of Colorado Wage Claim Act, wrongful termination, breach of contract, unjust enrichment, failure to supervise, respondeat superior, outrageous conduct, and defamation. The causes of action related to Claimant's allegation that he was terminated from his employment at First Union due to an error on a customer's account when Claimant was out of town. Claimant alleged that he was unaware of the facts and circumstances of the error, someone other than Claimant made the error and that First Union is responsible for compensation earned and other benefits owed prior to his termination.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimant failed to state a claim upon which relief can be granted; Respondents acted in good faith in offsetting commissions owed under the Colorado Wage Act; Claimant's damages were caused by his own conduct; Claimant's claims are barred by the doctrines of estoppel, laches and waiver; and Claimant was an employee-at-will who could be terminated at any time with or without cause.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$300,000 in compensatory damages. In addition, Claimant requested exemplary damages, costs, attorney's fees, interest and such other and further relief the Panel deemed just and equitable.

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

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

On or about November 18, 2003, the Panel denied Respondent Wachovia's Motion to Dismiss without prejudice.

After the conclusion of Claimant's case, Respondents moved for a dismissal of all causes of action. After deliberation, the Panel granted a Dismissal as to the cause of action based on the alleged "illegal" dismissal of Claimant, but denied Respondents' request to dismiss any further causes of action.

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

### AWARD

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

1. Respondent, Wachovia Securities, LLC, is solely liable for and shall pay to Claimant, Philip S. Almon, the sum of Seventy Eight Thousand Seven Hundred Forty Three Dollars and Seventy Five Cents (\$78,743.75) as compensatory damages;
2. Respondent, Wachovia Securities, LLC, is solely liable for and shall pay to Claimant, Philip S. Almon, interest on the above stated sum at the rate of 9%, to be compounded annually, from and including the date of service of this Award though and including the date this award is paid in full;
3. Claimant's claims against Respondent John D. Simmons, are hereby denied and dismissed with prejudice in their entirety;
4. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive and exemplary damages, are denied with prejudice; and
5. 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.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

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

Initial claim filing fee = \$ 300

#### 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 Wachovia Securities, LLC

Member surcharge	= \$ 1,700
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 2,750

**Adjournment Fees**

Adjournments granted during these proceedings:

November 24-26, 2003

Adjournment Request Stipulated To By All Parties

Adjournment Fee (Waived by Panel)	= \$ 1,125
-----------------------------------	------------

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

Two (2) Pre-hearing sessions with Panel x \$ 1,125	= \$ 2,250
--	------------

Pre-hearing conference:	04/25/2003	1 session
	11/18/2003	1 session

Nine (9) Hearing sessions with Panel x \$ 1,125	= \$ 10,125
---	-------------

Hearing Dates:	04/13/2004	2 sessions
	04/14/2004	2 sessions
	04/15/2004	3 sessions
	04/16/2004	2 sessions

<u>Total Forum Fees</u>	<u>= \$ 12,375</u>
-------------------------	--------------------

The Arbitration Panel has assessed \$ 4,125 of the forum fees to Philip S. Almon.

The Arbitration Panel has assessed \$ 4,125 of the forum fees to Wachovia Securities, LLC.

The Arbitration Panel has assessed \$ 4,125 of the forum fees to John D. Simmons.

Fee Summary

Claimant, Philip S. Almon is liable for:

Initial Filing Fee	= \$ 300
Forum Fees	= \$ 4,125
Total Fees	= \$ 4,425
Less payments	= \$ 1,425
Balance Due NASD Dispute Resolution	= \$ 3,000

Respondent, Wachovia Securities, Inc., is liable for:

Member Fees	= \$ 5,200
Forum Fees	= \$ 4,125
Total Fees	= \$ 9,325
Less payments	= \$ 5,200
Balance Due NASD Dispute Resolution	= \$ 4,125

Respondent, John D. Simmons, is liable for:

Forum Fees	= \$ 4,125
Total Fees	= \$ 4,125
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 4,125

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

ARBITRATION PANEL

Samuel L. McClaren, Esq. - Public Arbitrator, Presiding Chair  
Dom Alecci - Public Arbitrator  
Robert Allen Dudley- Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Samuel L. McClaren, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Dom Alecci  
Public Arbitrator

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

\_\_\_\_\_  
Robert Allen Dudley  
Non-Public Arbitrator

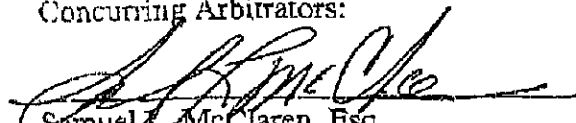
\_\_\_\_\_  
Signature Date

4/28/01  
\_\_\_\_\_  
Date of Service (NASD use only)

ARBITRATION PANEL

Samuel L. McClaren, Esq. - Public Arbitrator, Presiding Chair  
Dom Alecci - Public Arbitrator  
Robert Allen Dudley - Non-Public Arbitrator

Concurring Arbitrators:

  
Samuel L. McClaren, Esq.  
Public Arbitrator, Presiding Chair

Dec. 28, 2004  
Signature Date

\_\_\_\_\_  
Dom Alecci  
Public Arbitrator

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

\_\_\_\_\_  
Robert Allen Dudley  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (NASD use only)


**ARBITRATION PANEL**

Samuel L. McClaren, Esq. - Public Arbitrator, Presiding Chair  
Dom Alecci - Public Arbitrator  
Robert Allen Dudley - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Samuel L. McClaren, Esq.  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
Dom Alecci  
Public Arbitrator

*April 27, 2004*  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Robert Allen Dudley  
Non-Public Arbitrator

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

*4/22/04*  
\_\_\_\_\_  
Date of Service (NASD use only)



ARBITRATION PANEL

Samuel L. McClaren, Esq. - Public Arbitrator, Presiding Chair  
Dom Alecci - Public Arbitrator  
Robert Allen Dudley - Non-Public Arbitrator

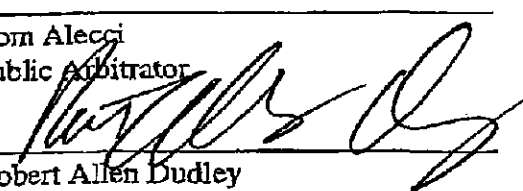
Concurring Arbitrators:

\_\_\_\_\_  
Samuel L. McClaren, Esq.  
Public Arbitrator, Presiding Chair

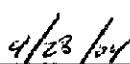
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Dom Alecci  
Public Arbitrator

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

  
\_\_\_\_\_  
Robert Allen Dudley  
Non-Public Arbitrator

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

  
\_\_\_\_\_  
Date of Service (NASD use only)