

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

Pragmatic Computing, Inc. Money Purchase Plan,
Ellen Staats Taubman Trust
and Diana Staats Taubman Trust

v.

02-06220
Denver, Colorado

Respondents

Wachovia Securities, LLC, Don A. Hansen
and Philip T. Kirshman

Nature of Dispute: Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

Pragmatic Computing, Inc. Money Purchase Plan, Ellen Staats Taubman Trust and Diana Staats Taubman Trust ("Claimants") were represented by Frank V. Cristiano, Esq., of Cristiano & Associates, Greenwood Village, Colorado.

Wachovia Securities, LLC ("Wachovia"), Don A. Hansen ("Hansen"), and Philip T. Kirshman ("Kirshman"), hereinafter referred to as ("Respondents"), were represented by Anne W. Larkin, Esq., of Wachovia Securities, Richmond, Virginia. Bruce Lewitas, Esq., of Lewitas & Associates, Chicago, Illinois appeared on behalf of Respondents on or about November 18, 2003.

CASE INFORMATION

The Statement of Claim was filed on or about September 30, 2002. Submission Agreements of Claimants were signed on or about September 30, 2002.

A Joint Statement of Answer was filed by Respondents Wachovia Securities, LLC, Don A. Hansen and Philip T. Kirshman on or about January 13, 2003. Submission Agreement of Respondent Wachovia Securities, LLC was signed on or about December 27, 2002. Submission Agreement of Respondent Don A. Hansen was signed on or about November 11, 2002. Submission Agreement of Respondent Philip T. Kirshman was signed on or about November 11, 2002.

CASE SUMMARY

Claimants asserted causes of action including the following: suitability, negligence, negligent supervision and breach of contract. The causes of action related to Claimants' allegation that Respondents stated that Respondents would invest the holdings of the Pragmatic Computing, Inc.

Money Purchase Plan, pursuant to an aggressive investment strategy while investing the holdings of both the Ellen Staats Taubman Trust and the Diana Staats Taubman Trust pursuant to a more conservative strategy that would be low in risk and high in liquidity. Claimants alleged that Respondents ignored Claimants' requests and invested all Claimants in an aggressive investment strategy that was unsuitable and against their investment objectives. Claimants alleged that Respondents liquidated Claimants' previous holdings and invested Claimants primarily in high tech and highly volatile stocks. Claimants also asserted that Respondents showed a bias toward investing Claimants in holdings in which Wachovia was a principal and a market maker, in breach of Respondents' fiduciary duty.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants failed to state a claim upon which relief can be granted and failed to state facts sufficient to constitute any cause of action; Claimants' claims are barred by the doctrines of laches, waiver and estoppel; all transactions recommended to and made for or on behalf of Claimants were suitable for and in accordance with the investment objectives of the Claimants; at all times, Claimants knew and were aware of the risks associated with their investments and voluntarily chose to assume those risks and as such Claimants are barred and estopped from recovery; to the extent any losses or diminution in value of Claimants' accounts occurred, such losses were the result of unforeseen market fluctuations and were within the risks assumed; and Respondents, at all times, discharged their responsibilities properly and in good faith in respect to all investments made by Claimants.

RELIEF REQUESTED

Claimant, Pragmatic Computing, Inc. Money Purchase Plan, requested an award in the amount of \$470,044.58 in compensatory damages. Claimant, Ellen Staats Taubman Trust, requested an award in the amount of \$55,118.28 in compensatory damages. Claimant, Diana Staats Taubman Trust, requested an award in the amount of \$59,217.75 in compensatory damages. At the arbitration hearing, Claimant, Pragmatic Computing, Inc. Money Purchase Plan, orally amended its calculations of compensatory damages and requested \$475,304.28. Claimant, Ellen Staats Taubman Trust, orally amended its calculations of compensatory damages and requested \$ 61,336.24. Claimant, Diana Staats Taubman Trust, orally amended its calculations of compensatory damages and requested \$65,105.99. Claimants also requested interest, costs, and attorney's fees.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested that this matter be expunged from Respondents Don A. Hansen's and Philip T. Kirshman's permanent registration record maintained by the Central Registration Department ("CRD").

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 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. Respondents, Wachovia Securities, LLC, Don A. Hansen and Philip T. Kirshman, are jointly and severally liable for and shall pay to Claimant, Pragmatic Computing, Inc. Money Purchase Plan, the sum of Two Hundred Six Thousand Six Hundred Ninety Five Dollars and Eighty Three Cents (\$206,695.83) in compensatory damages, plus interest at the rate of 8% compounded annually on this sum from and including February 1, 2001, through and including the date this award is paid in full;
2. Respondents, Wachovia Securities, LLC, Don A. Hansen and Philip T. Kirshman, are jointly and severally liable for and shall pay to Claimant, Ellen Staats Taubman Trust, the sum of Fifty Seven Thousand Seven Hundred Forty Two Dollars and Thirty Three Cents (\$57,742.33) in compensatory damages, plus interest at the rate of 8% compounded annually on this sum from and including February 1, 2001, through and including the date this award is paid in full;
3. Respondents, Wachovia Securities, LLC, Don A. Hansen and Philip T. Kirshman, are jointly and severally liable for and shall pay to Claimant, Diana Staats Taubman Trust, the sum of Thirty Six Thousand Four Hundred Sixty Eight Dollars and Eighty Four Cents (\$36,468.84) in compensatory damages, plus interest at the rate of 8% compounded annually on this sum from and including February 1, 2001, through and including the date this award is paid in full;
4. 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; 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 = \$ 375

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Wachovia Securities, LLC.

Member surcharge = \$ 2,250
Pre-hearing process fee = \$ 750
Hearing process fee = \$ 4,000

Adjournment Fees

Adjournments granted during these proceedings:

December 18-19, 2003

Adjournment jointly requested by all parties

Fee Assessed by the Panel = \$ 1,200

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:

Two (2) Pre-hearing sessions with Panel x \$ 1,200 = \$ 2,400

Pre-hearing conferences: 05/01/2003 1 session
12/19/2003 1 session

Fourteen (14) Hearing sessions with Panel x \$ 1,200 = \$ 16,800

Hearing Dates:	04/13/2004	2 sessions
	04/14/2004	2 sessions
	04/15/2004	3 sessions
	04/16/2004	2 sessions
	07/07/2004	2 sessions
	07/08/2004	3 sessions

Total Forum Fees	= \$ 19,200
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The Arbitration Panel has assessed \$ 12,800 of the forum fees jointly and severally to Pragmatic Computing, Inc. Money Purchase Plan, Ellen Staats Taubman Trust and Diana Staats Taubman Trust.

The Arbitration Panel has assessed \$ 6,400 of the forum fees jointly and severally to Wachovia Securities, LLC, Don A. Hansen, and Philip T. Kirshman.

Fee Summary

Claimants, Pragmatic Computing, Inc. Money Purchase Plan, Ellen Staats Taubman Trust and Diana Staats Taubman Trust, are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 375
Forum Fees	= \$ 12,800
<u>Adjournment Fees</u>	= \$ 600
Total Fees	= \$ 13,775
<u>Less payments</u>	= \$ 1,575
Balance Due NASD Dispute Resolution	= \$ 12,200

Respondent, Wachovia Securities, LLC, is liable for:

<u>Member Fees</u>	= \$ 7,000
Total Fees	= \$ 7,000
<u>Less payments</u>	= \$ 7,000
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Wachovia Securities, LLC, Don A. Hansen Philip T. Kirshman are jointly and severally liable for:

Forum Fees	= \$ 6,400
<u>Adjournment Fees</u>	= \$ 600
Total Fees	= \$ 7,000

Less payments	= \$ 1,000
Balance Due NASD Dispute Resolution	= \$ 6,000

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

Thaddeus J. Tecza, Ph.D - Public Arbitrator, Presiding Chair
Marilyn R. Lewis, Esq. - Public Arbitrator
Melanie J. Marmorstein- Non-Public Arbitrator

Concurring Arbitrators:

Thaddeus J. Tecza, Ph.D
Public Arbitrator, Presiding Chair

Signature Date

Marilyn R. Lewis, Esq.
Public Arbitrator

Signature Date

Melanie J. Marmorstein
Non-Public Arbitrator

Signature Date

7/20/04
Date of Service (NASD use only)

NASD Dispute Resolution
Arbitration No. 02-06220
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<u>Less payments</u>	<u>= \$ 1,000</u>
Balance Due NASD Dispute Resolution	= \$ 6,000

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Melanie J. Marmorstein- Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

7/20/04
Signature Date

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Public Arbitrator

Signature Date

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Non-Public Arbitrator

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NASD Dispute Resolution
Arbitration No. 02-06220
Award Page 6 of 6

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Marilyn R. Lewis, Esq. - Public Arbitrator
Melanie J. Marmorstein- Non-Public Arbitrator

Concurring Arbitrators:

Thaddeus J. Tecza, Ph.D
Public Arbitrator, Presiding Chair

Signature Date

Marilyn R. Lewis
Marilyn R. Lewis, Esq.
Public Arbitrator

July 20, 2004
Signature Date

Melanie J. Marmorstein
Non-Public Arbitrator

Signature Date

7/20/04
Date of Service (NASD use only)

Less payments	= \$ 1,000
Balance Due NASD Dispute Resolution	= \$ 6,000

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Thaddeus J. Tecza, Ph.D
Public Arbitrator, Presiding Chair

Signature Date

Marilyn R. Lewis, Esq.
Public Arbitrator

Signature Date

Melanie J. Marmorstein
Non-Public Arbitrator

7/19/04

Signature Date

2/20/04

Date of Service (NASD use only)