

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Marie E. Schwartz

vs.

02-06607
Omaha, Nebraska

Respondents

Wachovia Securities, LLC f/k/a First Union Securities, Inc.
and Julian Klaczynsky

Nature of the Dispute: Customer vs. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Marie E. Schwartz ("**Claimant**") was represented by Gail E. Boliver, Esq., Boliver Law Firm, Omaha, Nebraska.

Wachovia Securities, LLC ("**Wachovia**") and Julian Klaczynsky ("**Klaczynsky**"), hereinafter collectively referred to as ("**Respondents**"), were represented by Alison W. Feehan, Esq., Wachovia Securities, LLC, Richmond, Virginia.

CASE INFORMATION

The Statement of Claim was filed on or about November 4, 2002. The Submission Agreement of Claimant, Marie E. Schwartz, was signed on or about March 17, 2002.

Respondents, Wachovia Securities, LLC and Julian Klaczynsky filed the Statement of Answer, on or about January 31, 2003. The Submission Agreement of Respondent, Wachovia Securities, LLC, was signed on or about January 30, 2003. The Submission Agreement of Respondent, Julian Klaczynsky, was signed on or about January 30, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: Breach of fiduciary duty, negligence, Violations of Nebraska Securities Acts, Violations of NASD Rules of Supervision and Suitability, misrepresentation, negligent supervision and breach of contract. Claimant alleged that the Respondents recommended a high-risk portfolio that was unsuitable and inconsistent with her retirement objectives, which led to losses in her account. The causes of action related to the

recommendation and purchase of various securities investments.

Respondents, Wachovia Securities, LLC and Julian Klaczynsky, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: The Statement of Claim failed to state a claim upon which relief may be granted, and failed to state facts sufficient to constitute a cause of action; Claimant directed, approved and authorized each and every transaction in her accounts; Claimant ratified each and every transaction in her accounts; and Ms. Schwartz's claims for relief are barred pursuant to the doctrines of laches, waiver and/or estoppel.

RELIEF REQUESTED

Claimant requested an award of \$93,000.00 in compensatory damages, plus attorney's fees, costs and such other damages as the panel may deem appropriate under the facts of this case.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorney's fees and any other relief as is just and proper. Respondents also requested that the panel order expungement of Respondent, Klaczynsky's CRD record.

OTHER ISSUES CONSIDERED & DECIDED

Claimant's Motion for Recusal of Arbitrator Sam Brower was filed on or about October 7, 2004. Respondents' Opposition to Claimant's Request for the Recusal of Arbitrator Sam Brower was filed on or about October 8, 2004.

On October 8, 2004, Arbitrator Sam Brower withdrew from the Panel. Arbitrator Verne R. Gray replaced him on the Panel.

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

AWARD

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

1. Claimant's claims, each and all, against Respondents, Wachovia Securities, LLC and Julian Klaczynsky, are dismissed with prejudice;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent, Julian Klaczynsky's registration records maintained by the NASD Central

Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent, Julian Klaczynsky must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;

3. 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
4. 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 fees for each claim:

Initial claim filing fee	= \$225.00
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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 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	\$	1,100.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	<u>1,700.00</u>
Total Member Fees	\$	3,550.00

Adjournment Fees

Adjournment requested during these proceedings:

February 17-20, 2004 Hearing dates requested by Claimant	\$	750.00
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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:

2	Pre-hearing sessions with a single arbitrator	x	450.00	\$	900.00
	August 5, 2003	1			
	October 1, 2004	1			
2	Pre-hearing sessions with Panel	x	750.00	\$	1,500.00
	May 20, 2003	1	session		
	February 25, 2004	1	session		
6	Hearing sessions	x	750.00	\$	4,500.00
	October 11, 2004	2	sessions		
	October 12, 2004	2	sessions		
	October 13, 2004	2	sessions		
	Total Forum Fees			\$	6,900.00

The Arbitration Panel has assessed \$3,675.00 of the forum fees to Marie E. Schwartz

The Arbitration Panel has assessed \$3,225.00 of the forum fees jointly and severally to Wachovia Securities, LLC, and Julian Klawnsky.

Fee Summary

Claimant, Marie E. Schwartz, is liable for:

Initial Filing Fee	= \$	225.00
Adjournment Fee	= \$	750.00
<u>Forum Fees</u>	= \$	<u>3,675.00</u>
Total Fees	= \$	4,650.00
<u>Less payments</u>	= \$	<u>-975.00</u>
Balance Due NASD Dispute Resolution	= \$	3,675.00

Respondent, Wachovia Securities, LLC, is liable for:

<u>Member Fees</u>	= \$	<u>3,550.00</u>
Total Fees	= \$	3,550.00
<u>Less payments</u>	= \$	<u>-3,550.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Wachovia Securities, LLC, and Julian Klaczynsky, are jointly and severally liable for:

<u>Forum Fees</u>	= \$	<u>3,225.00</u>
Total Fees	= \$	3,225.00
<u>Less payments</u>	= \$	<u>-0.00</u>
Balance Due NASD Dispute Resolution	= \$	3,225.00

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

ARBITRATION PANEL

Thomas J. Tarsney, Esq. - Public Arbitrator, Presiding Chair
Verne R. Gray - Public Arbitrator
William H. O'Donnell - Non-Public Arbitrator

Concurring Arbitrators:

Thomas J. Tarsney, Esq.
Public Arbitrator, Presiding Chair

Signature Date

/s/ Verne R. Gray
Verne R. Gray
Public Arbitrator

October 22, 2004
Signature Date

/s/ William H. O'Donnell
William H. O'Donnell
Non-Public Arbitrator

October 21, 2004
Signature Date

October 25, 2004
Date of service

Respondents, Wachovia Securities, LLC, and Julian Klaczynsky, are jointly and severally liable for:

<u>Forum Fees</u>	= \$	3,225.00
Total Fees	= \$	3,225.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	3,225.00

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

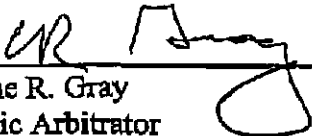
ARBITRATION PANEL

Thomas J. Tarsney, Esq. - Public Arbitrator, Presiding Chair
Verne R. Gray - Public Arbitrator
William H. O'Donnell - Non-Public Arbitrator

Concurring Arbitrators:

Thomas J. Tarsney, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Verne R. Gray
Public Arbitrator

10.22.04

Signature Date

William H. O'Donnell
Non-Public Arbitrator

Signature Date

Date of service

NASD Dispute Resolution
Arbitration No. 02-06607
Award Page 5 of 5

Respondents, Wachovia Securities, LLC, and Julian Klaczynsky, are jointly and severally liable for:

<u>Forum Fees</u>	= \$	3,225.00
<u>Total Fees</u>	= \$	3,225.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	3,225.00

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

ARBITRATION PANEL

Thomas J. Tarney, Esq. - Public Arbitrator, Presiding Chair
Verne R. Gray - Public Arbitrator
William H. O'Donnell - Non-Public Arbitrator

Concurring Arbitrators:

Thomas J. Tarney, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Verne R. Gray
Public Arbitrator

Signature Date

William H. O'Donnell
Non-Public Arbitrator

10-21-04
Signature Date

Date of service

NASD Dispute Resolution
 Arbitration No. 02-06607
 Award Page 5 of 5

Respondents, Wachovia Securities, LLC, and Julian Klawnsky, are jointly and severally liable for:

<u>Forum Fees</u>	= \$	3,225.00
<u>Total Fees</u>	= \$	3,225.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	3,225.00

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ARBITRATION PANEL

Thomas J. Tarsney, Esq. - Public Arbitrator, Presiding Chair
 Verne R. Gray - Public Arbitrator
 William H. O'Donnell - Non-Public Arbitrator

Concurring Arbitrators:


 Thomas J. Tarsney, Esq.
 Public Arbitrator, Presiding Chair

10-27-04
 Signature Date

 Verne R. Gray
 Public Arbitrator

 Signature Date

 William H. O'Donnell
 Non-Public Arbitrator

 Signature Date

 Date of service