

Award
NASD Dispute Resolution

RECEIVED

2004 MAY -9 A 8:55
REGISTRATION & DISCLOSURE

In the Matter of the Arbitration Between:

Shafiq Hasan, Trustee for the Pro-Guard International, Inc. Pension Fund and Pro-Guard International, Inc., Claimants v. First Union Securities n/k/a Wachovia Securities Inc., Respondent

Case Number: 02-07847

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants:

Robert A. Uhl, Esq.
Orousha Brocious, Esq.
Aidikoff & Uhl
Beverly Hills, California

For Respondent:

Michael J. Abbott, Esq.
Robert J. Girard, Esq.
Jones, Bell, Abbott, Fleming
& Fitzgerald
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: December 27, 2002

Claimants' Joint Uniform Submission Agreement signed: December 24, 2002

Statement of Answer filed: March 13, 2003

Respondent's Uniform Submission Agreement signed: March 13, 2003

CASE SUMMARY

Claimants alleged breach of fiduciary duty, constructive fraud, misrepresentation, unsuitability, violation of state and federal securities laws, violation of NASD and NYSE Rules and failure to supervise. Claimants' allegations involved technology stocks, including but not limited to PMC Sierra, Applied Micro Circuits and Cisco.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants requested \$521,295.00 in compensatory damages, disgorgement of profits Respondent generated from Claimants' accounts, lost opportunity cost of what Claimants' accounts would have earned if the money was invested properly, unspecified punitive damages, pre- and post-judgment interest and costs, including attorney's fees.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On January 30, 2003, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On May 12, 2003, Respondent's counsel signed a Waiver Agreement on Respondent's behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

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

- 1) Respondent is liable to and shall pay Claimant Shafiq Hasan, Trustee for the Pro-Guard International, Inc. Pension Fund the sum of \$91,564.39 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimant Shafiq Hasan, Trustee for the Pro-Guard International, Inc. Pension Fund interest in the amount of 5% simple interest per annum on \$91,564.39 from April 9, 2001, until the date said amount is paid in full to Claimant Shafiq Hasan, Trustee for the Pro-Guard International, Inc. Pension Fund.
- 3) Respondent is liable to and shall pay Claimant Pro-Guard International, Inc. the sum of \$242,676.69 in compensatory damages.
- 4) Respondent is liable to and shall pay Claimant Pro-Guard International, Inc. interest in the amount of 5% simple interest per annum on \$242,676.69 from April 9, 2001, until the date said amount is paid in full to Claimant Pro-Guard International, Inc.
- 5) Respondent is liable to and shall pay Claimants the sum of \$375.00 as reimbursement for filing fees.
- 6) Respondent is liable to and shall pay Claimants the sum of \$8,500.00 as reimbursement for expert witness fees.
- 7) Except as set forth in paragraphs 5 and 6, the parties shall bear their respective costs, including attorney's fees.
- 8) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

| | |
|--------------------------|-------------|
| Initial claim filing fee | = \$ 375.00 |
|--------------------------|-------------|

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Wachovia Securities Inc. is a party and the following fees are assessed:

| | |
|--------------------------|---------------------|
| Member Surcharge | = \$2,250.00 |
| Pre-Hearing Process Fee | = \$ 750.00 |
| Hearing Process Fee | = \$4,000.00 |
| Total Member Fees | = \$7,000.00 |

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

| | |
|--|---------------------|
| One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session | = \$1,200.00 |
| Pre-hearing conference: May 30, 2003 | 1 session |
| Seven (7) Hearing sessions @ \$1,200.00/session | = \$8,400.00 |
| Hearings: February 17, 2004 | 2 sessions |
| February 18, 2004 | 2 sessions |
| February 19, 2004 | 2 sessions |
| February 20, 2004 | 1 session |
| Total Forum Fees | = \$9,600.00 |

The Panel assessed the entire balance of the forum fees in the amount of \$9,600.00 to Respondent.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

| | |
|--|------------------------|
| Initial Filing Fee | = \$ 375.00 |
| <u>Less payments</u> | <u>= \$ (1,575.00)</u> |
| Refund Due from NASD Dispute Resolution | = \$ (1,200.00) |

2. Respondent is charged with the following fees and costs:

| | |
|--|------------------------|
| Member Fees | = \$ 7,000.00 |
| <u>Forum Fees</u> | <u>= \$ 9,600.00</u> |
| Total Fees | = \$16,600.00 |
| <u>Less payments</u> | <u>= \$ (7,000.00)</u> |
| Balance Due NASD Dispute Resolution | = \$ 9,600.00 |

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

ARBITRATION PANEL

| | | |
|-------------------------|---|---|
| <i>Alan Stamm, Esq.</i> | - | <i>Public Arbitrator, Presiding Chair</i> |
| <i>James S. Carlson</i> | - | <i>Public Arbitrator</i> |
| <i>Gerald C. Tambe</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signatures



Alan Stamm, Esq.
Chair, Public Arbitrator

February 23, 2004
Signature Date

James S. Carlson
Public Arbitrator

Signature Date

Gerald C. Tambe
Non-Public Arbitrator

Signature Date

2/23/04
Date of Service

NASD Dispute Resolution
Arbitration No. 02-07847
Award Page 6 of 6

ARBITRATION PANEL

Alan Stamm, Esq.
James S. Carlson
Gerald C. Tambe

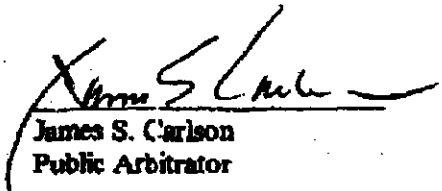
-
-
-

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Alan Stamm, Esq.
Chair, Public Arbitrator

Signature Date


James S. Carlson
Public Arbitrator

2.23.04
Signature Date

Gerald C. Tambe
Non-Public Arbitrator

Signature Date

2/23/04
Date of Service

ARBITRATION PANEL

Alan Stamm, Esq.
James S. Carlson
Gerald C. Tamba

-
-
-

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Alan Stamm, Esq.
Chair, Public Arbitrator

Signature Date

James S. Carlson
Public Arbitrator

Signature Date



Gerald C. Tamba
Non-Public Arbitrator

2/23/04
Signature Date

2/23/04
Date of Service