

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

James Allen Mehall, Claimant v. Wachovia Securities, LLC, Respondent

Case Number: 03-00345

Hearing Site: Los Angeles, California

Nature of the Dispute: Associated Person v. Member

REPRESENTATION OF PARTIES

For Claimant:

William R. Lindsley, Esq.
Law Offices of William R. Lindsley
Toledo, Ohio

For Respondent:

David F. Faustman, Esq.
Lester Aponte, Esq.
Grotta, Glassman & Hoffman, P.A.
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: January 13, 2003

Amended Statement of Claim filed: July 9, 2003

Claimant's Uniform Submission Agreement signed: December 15, 2002

Initial Statement of Answer filed by Respondent: April 11, 2003

Amended Statement of Answer filed by Respondent: September 24, 2003

Respondent's Uniform Submission Agreement signed: March 12, 2003

CASE SUMMARY

Claimant's Initial Statement of Claim alleged breach of contract, wrongful termination, defamation, and intentional interference with economic expectancies. Claimant based his wrongful termination claim as being in violation of Respondent's policies and procedures.

On July 9, 2003, Claimant filed an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(a). Claimant's Amended Statement of Claim alleged breach of contract, wrongful termination, defamation, and intentional interference with economic expectancies. Claimant based his wrongful termination claim as being not only in violation of Respondent's policies and procedures but in violation of public policy in that it was based on Claimant's "vigorous enforce[ment] of NASD compliance rules and regulations."

Respondent's Initial Statement of Answer denied the allegations of wrongdoing set forth in the Claimant's Initial Statement of Claim.

Respondent's Amended Statement of Answer denied the allegations of wrongdoing set forth in the Claimant's Amended Statement of Claim.

RELIEF REQUESTED

Claimant's Initial and Amended Statements of Claim each requested \$5,000,000.00 in compensatory damages, \$5,000,000.00 in punitive damages, and costs, including attorney's fees.

Respondent's Initial Statement of Answer requested dismissal of the Claimant's Initial Statement of Claim in its entirety.

Respondent's Amended Statement of Answer requested dismissal of the Claimant's Amended Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On July 7, 2003, Claimant and Claimant's 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On February 24, 2005 Respondent filed a Motion for Summary Disposition. On March 14, 2005, Claimant filed an Opposition to the Motion. Respondent filed a Reply on March 21, 2005. On March 31, 2005, a telephonic pre-hearing conference was held, attended by counsel for the parties and the Panel. After due deliberation, the Panel ordered the parties to submit further briefing on the issues raised by Respondent's Motion and Claimant's Opposition. On April 7, 2005, Claimant submitted a Memorandum on the Issue of NASD Rule 9264 and Request for Sanctions. On April 8, 2005, Respondent submitted a supplemental Memorandum in Support of its Motion for Summary Disposition. On April 15, 2005, a telephonic pre-hearing conference was held, attended by counsel for the parties and the full Panel. After due deliberation, the Panel denied the motion.

On May 4, 2005, at the close of Claimant's case, Respondent requested permission to file a Motion for Entry of Judgment on the grounds that Claimant had failed to establish a prima facie case. The Panel ordered that Respondent file its motion within forty-five days of its preparation of a transcript made from the audiotapes of the hearings. On July 20, 2005, Respondent filed a Motion for Entry of Judgment. On August 2, 2005, Claimant filed an Opposition to the motion. On August 19, 2005, a telephonic conference was held, attended by counsel for the parties and the full Panel. After due deliberation, the Panel denied the motion.

At the hearing, on August 31, 2005, Respondent renewed the Motion for Entry of Judgment for Defamation. After due deliberation, the Panel granted the Motion.

FINDINGS AND CONCLUSIONS

The Panel finds there was serious mismanagement at various levels of Respondent, but not by James Mehall. There is a contract of employment at will between Claimant and Respondent, but it is a rebuttable presumption and the evidence showed that the presumption was rebutted.

The Employee Handbook contained clear and understandable language stating that there was a employment at will as well as language setting out a Discipline and Dismissal procedure for cause. The strong language supporting both propositions raised two distinct expectations in an employee thus creating an ambiguity, which is construed in favor of the Claimant.

Respondent's breach of contract is found. Respondent is found to have violated public policy by instructing Claimant to do so and terminating him for disobeying such instruction.

Therefore, Claimant is awarded attorney's fees, costs, and punitive damages.

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 Wachovia Securities, LLC is liable to and shall pay Claimant James Allen Mehall the sum of \$647,620.00 for past loss, the sum of \$253,411.00 for present value of future loss, for a total sum of \$901,031.00 in general damages.
- 2) Respondent Wachovia Securities, LLC is liable to and shall pay Claimant James Allen Mehall the sum of \$250,000.00 in punitive damages for violation of public policy.
- 3) Respondent Wachovia Securities, LLC is liable to and shall pay Claimant James Allen Mehall the sum of \$133,881.00 in attorney's fees for violation of public policy.
- 4) Respondent Wachovia Securities, LLC is liable to and shall pay Claimant James Allen Mehall the sum of \$6,757.85 for costs.
- 5) Any and all relief not specifically addressed herein 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	= \$ 600.00
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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, LLC is a party and the following fees are assessed:

Member Surcharge	= \$3,350.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$5,500.00
Total Member Fees	= \$9,600.00

Adjournment Fees

The following adjournment fees are assessed:

April 15-16 & 19-21, 2004 adjournment requested by both parties = \$ 1,200.00

1. The Panel assessed \$600.00 of the adjournment fee to Claimant.
2. The Panel assessed \$600.00 of the adjournment fee to Respondent.

January 27 - February 2, 2005 adjournment requested by Respondent = \$ 1,200.00

The Panel assessed the adjournment fee in its entirety to Respondent.

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 a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: October 27, 2004 1 session

Five (5) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 6,000.00
Pre-hearing conferences: September 24, 2003 1 session
December 14, 2004 1 session
March 31, 2005 1 session
April 15, 2005 1 session
August 19, 2005 1 session

Eighteen (18) Hearing sessions @ \$1,200.00/session = \$21,600.00
Hearings: April 28, 2005 2 sessions
April 29, 2005 2 sessions
May 2, 2005 2 sessions
May 3, 2005 2 sessions
May 4, 2005 2 sessions
August 29, 2005 2 sessions
August 30, 2005 3 sessions
August 31, 2005 2 sessions
September 1, 2005 1 session

Total Forum Fees = \$28,050.00

The Panel assessed \$28,050.00 of the forum fees to Respondent Wachovia Securities, LLC.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimant requested 6 photocopies @ \$0.50	= \$	3.00
Respondent requested 38 photocopies @ \$0.50	= \$	19.00
Respondent requested 26 copies of audiotapes @ \$15.00	= \$	390.00

Fee Summary

1. Claimant James Allen Mehall is charged with the following fees and costs:

Initial Filing Fee	= \$	600.00
Adjournment Fee	= \$	600.00
<u>Administrative Costs</u>	= \$	3.00
Total Fees	= \$	1,203.00
<u>Less payments</u>	= \$	(3,700.00)
Refund Due NASD Dispute Resolution	= \$	(2,497.00)

2. Respondent Wachovia Securities, LLC is charged with the following fees and costs:

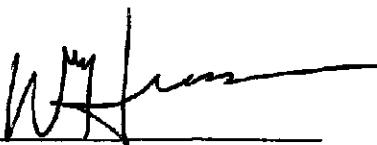
Member Fees	= \$	9,600.00
Adjournment Fee	= \$	1,800.00
Forum Fees	=	\$28,050.00
<u>Administrative Costs</u>	= \$	409.00
Total Fees	=	\$39,859.00
<u>Less payments</u>	=	\$(9,795.00)
Balance Due NASD Dispute Resolution	=	\$30,064.00

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>William W. Huss</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Michael M. Hachigian</i>	-	<i>Public Arbitrator</i>
<i>Joy Diane Williams</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures



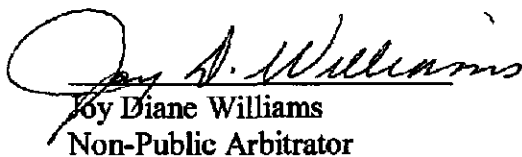
William W. Huss
Chair, Public Arbitrator

9/1/05
Signature Date



Michael M. Hachigian
Public Arbitrator

9/1/2005
Signature Date



Joy Diane Williams
Non-Public Arbitrator

9/1/05
Signature Date

September 1, 2005
Date of Service