

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant/Counter-Respondent
Wachovia Securities, Inc.

v.

03-01182
Denver, Colorado

Respondent/Counter-Claimant
Jamie Engelking

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

REPRESENTATION OF PARTIES

Wachovia Securities, Inc. ("Claimant") was represented by William D. Nelson, Esq., of Rothgerber Johnson & Lyons, LLP, Denver, Colorado.

Jamie Engelking ("Respondent") was represented by James Rollin Miller, Esq., of Miller Wood, L.L.C., until a Notice of Withdrawal was filed on or about October 2, 2003. After which, Respondent was represented by Charles H. Torres, Esq., Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about February 14, 2003. The Submission Agreement of Claimant was signed on or about February 13, 2003.

The Statement of Answer and Counterclaim was filed by Respondent, Jamie Engelking, on or about April 24, 2003. The Submission Agreement of Respondent, Jamie Engelking, was signed on or about April 17, 2003.

Claimant filed a Response to Respondent's Counterclaim on or about May 15, 2003.

CASE SUMMARY

Claimant asserted causes of action including the following: contractual indemnification and common law indemnity. The causes of action related to Claimant's allegation that Respondent took advantage of a personal relationship with two of his customers by inducing them to mortgage their home and reinvest the loan proceeds in a variable annuity, Scutter Gateway Plus Annuity. Claimant alleged that after an investigation, it offered to settle with the customers. Claimant asserted that in accordance with its Consultant Development Candidate Agreement with Respondent, Engleking would be

responsible for any costs involved settling any customer claim and pursuing this arbitration claim through contractual indemnification.

Respondent denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimant's claims are barred by the doctrines of waiver, estoppel, laches and unclean hands; Claimant's claims are barred because of the lack of due process; Claimant's claims are barred by settlement and release; Claimant's claims are barred by an accord and satisfaction; Claimant's claim for contractual indemnity is barred because of a lack of privity; and Claimant's claim for contractual indemnity is barred because the contract was not assignable to Claimant.

Respondent asserted the following causes of action in his Counterclaim: negligent investigation and settlement; negligent nondisclosure; and fraud by nondisclosure. The causes of action related to Respondent's allegation that Wachovia owed Respondent a duty to conduct a proper investigation before settling a claim asserted against him. Respondent also alleged that Wachovia owed a duty to timely disclose that a claim was made, that Wachovia was not going to accept sole responsibility for the claim, that Respondent could be liable on the claim as an indemnitor, that Respondent had a right to undertake a defense of the claim, and that Respondent had a right to disapprove the settlement

Counter-Respondent denied the allegations set forth in the Respondent's Counterclaim and asserted affirmative defenses including the following: the claims in the Respondent's Counterclaim fail to state a claim upon which relief can be granted; the claims in Respondent's Counterclaim are barred because Respondent failed to mitigate his damages; Respondent's conduct constituting waiver, estoppel and laches bar the claims made in Respondent's Counterclaim; the claims in Respondent's Counterclaim are barred by the doctrine of unclean hands; the claims in Respondent's Counterclaim are barred or reduced by the comparative or contributory negligence of Respondent.

RELIEF REQUESTED

Claimant requested an award of \$260,707.11 in damages, plus costs, attorneys' fees and any other relief the panel deemed just and equitable.

Respondent requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees. In Respondent's Counterclaim, he requested an award of unspecified damages, plus costs, attorneys' fees and any other relief the panel deemed just and equitable.

Counter-Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

During closing arguments Respondent presented a Supplemental Written Closing Argument Brief as part of his closing. Claimant objected because it was not notified in advance that any brief would be submitted and that it would not be able to respond. After deliberation, the panel ruled to allow Respondent's brief and granted Claimant an opportunity to file a responsive post-hearing brief on or before July 22, 2005.

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, the evidence presented at the hearing, and the post-hearing briefs, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims, each and all, are denied and dismissed with prejudice in their entirety;
2. Respondent's Counterclaims, each and all, are hereby denied and dismissed with prejudice in their entirety;
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 fee for each claim:

Initial claim filing fee	= \$ 1,000
Counterclaim filing fee	= \$ 250

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, Inc.

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

Adjournment Fees

Adjournments granted during these proceedings:

June 16-20, 2003 (Adjournment requested by Respondent, Jamie Engelking)

Fee Assessed by the Panel	= \$ 1,125
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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:

One (1) Pre-hearing session with Chairperson x \$ 450	= \$ 450
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Pre-hearing conference:	07/08/2005	1 session
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One (1) Pre-hearing session with Panel x \$ 1,125	= \$ 1,125
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Pre-hearing conference:	05/05/2004	1 session
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Six (6) Hearing sessions with Panel x \$ 1,125	= \$ 6,750
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Hearing Dates:	07/12/2005	2 sessions
	07/13/2005	2 sessions
	07/14/2005	2 sessions

Total Forum Fees	= \$ 8,325
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The Arbitration Panel has assessed \$ 4,162.50 of the forum fees to Wachovia Securities, Inc.

The Arbitration Panel has assessed \$ 4,162.50 of the forum fees to Jamie Engelking.

FEE SUMMARY

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

<u>Initial Filing Fee</u>	= \$ 1,000.00
<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 4,162.50
<u>Total Fees</u>	= \$ 10,362.50
<u>Less payments</u>	= \$ 7,325.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 3,037.50

Respondent, Jamie Engelking, is liable for:


<u>Counterclaim Filing Fee</u>	= \$ 250.00
<u>Forum Fees</u>	= \$ 4,162.50
<u>Adjournment Fee</u>	= \$ 1,125.00
<u>Total Fees</u>	= \$ 5,537.50
<u>Less payments</u>	= \$ 1,250.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 4,287.50

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

Dennis Dowd - Non-Public Arbitrator, Presiding Chair
Jonathan H. Larson, Esq. - Non-Public Arbitrator
Cletus E. Byrne, Jr. - Non-Public Arbitrator

Concurring Arbitrators:



Dennis Dowd
Non-Public Arbitrator, Presiding Chair

August 9, 2005

Signature Date

Jonathan H. Larson, Esq.
Non-Public Arbitrator

Signature Date

Cletus E. Byrne, Jr.
Non-Public Arbitrator

Signature Date

8/10/05

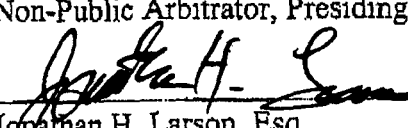
Date of Service (NASD use only)

ARBITRATION PANEL

Dennis Dowd - Non-Public Arbitrator, Presiding Chair
Jonathan H. Larson, Esq. - Non-Public Arbitrator
Cletus E. Byrne, Jr. - Non-Public Arbitrator

Concurring Arbitrators:

Dennis Dowd
Non-Public Arbitrator, Presiding Chair



Jonathan H. Larson, Esq.
Non-Public Arbitrator

Signature Date


August 10, 2005
Signature Date

Cletus E. Byrne, Jr.
Non-Public Arbitrator

Signature Date


Date of Service (NASD use only)

ARBITRATION PANEL

Dennis Dowd - Non-Public Arbitrator, Presiding Chair
Jonathan H. Larson, Esq. - Non-Public Arbitrator
Cletus E. Byrne, Jr. - Non-Public Arbitrator

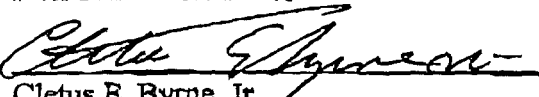
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Non-Public Arbitrator, Presiding Chair

Signature Date

Jonathan H. Larson, Esq.
Non-Public Arbitrator

Signature Date


Cletus E. Byrne, Jr.
Non-Public Arbitrator

8/9/05
Signature Date

8/10/05
Date of Service (NASD use only)