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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Wachovia Securities, Inc.

Case Number: 03-01586

Names of the Respondents  
Ronald C. Ball and  
Janney Montgomery Scott, LLC

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Wachovia Securities, Inc., hereinafter referred to as "Claimant": Thomas B. Lewis, Esq., Stark & Stark, P.A., Lawrenceville, New Jersey and R. Stephen Camp, Vice President, Assistant General Counsel, Wachovia Securities, Inc., Richmond, Virginia.

For Respondents Janney Montgomery Scott, LLC ("JMS") and Ronald C. Ball ("Ball") (with respect to the issues raised in Counts II, III and IV of the Amended Statement of Claim): Carrie L. Chelko, Vice President – Legal Department, Janney Montgomery Scott, LLC, Philadelphia, Pennsylvania until her withdrawal of counsel for Respondent Ball on or about October 27, 2004. Thereafter, Respondent Ball appeared pro se.

For Respondent Ronald C. Ball ("Ball") (with respect to Count I of the Statement of Claim): Paula D. Shaffner, Esq. and John E. Bisordi, Esq., Saul Ewing, LLP, Philadelphia, Pennsylvania until their withdrawal of counsel for Respondent Ball on or about February 13, 2004. Thereafter, Respondent Ball appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: March 5, 2003.

Claimant signed the Uniform Submission Agreement: June 10, 2003.

Amended Statement of Claim filed on or about: June 6, 2003.

Statement of Answer to Counts II, III and IV of the Amended Statement of Claim filed by Respondents JMS and Ball on or about: July 25, 2003.

Statement of Answer to Count I of the Statement of Claim and Counterclaim filed by Respondent Ball on or about: September 8, 2003.

Claimant's Answer to Respondent Ball's Counterclaim filed on or about: January 7, 2004.

Claimant's Motion to Dismiss With Prejudice Respondent's Counterclaims and Defenses filed on or about: January 11, 2005.

Respondents JMS and Ball did not file executed Uniform Submission Agreements.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of promissory note; reimbursement for reversed trades; conversion and misappropriation of trade secrets; breach of fiduciary duty and duty of good faith and fair dealing; and, tortious interference with business relations. The causes of action relate to Respondent Ball's former employment with Claimant and the Promissory Note dated March 12, 2001 entered into between Claimant and Respondent Ball. In addition, Claimant asserted a Motion to Dismiss Respondent Ball's Counterclaim on the basis that Respondent Ball failed to produce all relevant documents and information pursuant to the Panel's November 3, 2004 Order. Furthermore, unless specifically admitted in its Answer, Claimant denied the allegations made in the Counterclaim and asserted various defenses.

Unless specifically admitted in their Answer, Respondents JMS and Ball denied the allegations made in the Amended Statement of Claim and asserted various defenses.

Unless specifically admitted in his Answer, Respondent Ball denied the allegations made in the Statement of Claim and asserted a Counterclaim for defamation and interference with business relations.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$125,807.09, disgorgement of all gross profits received by Respondents, an order directing Respondents to return and expunge all proprietary information and documents misappropriated by them, plus interest, attorney's fees, costs, expenses and such other relief deemed appropriate. In addition, Claimant requested that Respondent Ball's Counterclaim be dismissed in its entirety together with interest, costs of suit, attorneys' fees and any additional relief permitted by law.

Respondents JMS and Ball requested that Counts II, III and IV of the Amended Statement of Claim be dismissed in their entirety and that the costs of this proceeding, including attorney's fees, be awarded to Respondents.

Respondent Ball requested that Count I of the Statement of Claim be denied in all respects and that the costs of this proceeding, including attorney's fees, be assessed against Claimant. Furthermore, as asserted in his Counterclaim, Respondent Ball requested unspecified compensatory damages and such other relief deemed appropriate.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Ball did not appear at the evidentiary hearing conducted on February 23, 2005. Pursuant to the Panel's instruction, NASD Dispute Resolution staff reached Respondent Ball on his cell phone from the hearing room. The Panel informed Respondent Ball that he could participate at the hearing telephonically. In response, Respondent Ball declined to participate at the hearing. In addition, the Chairperson advised Respondent Ball that he would be in default if

he did not appear telephonically and Respondent Ball acknowledged that he understood. Thereafter Respondent Ball disconnected and never reappeared. Upon the representations made by Respondent Ball, the Panel determined that Respondent Ball has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents JMS and Ball did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and having answered the claim, are bound by the determinations of the Panel on all issues submitted.

On or about June 6, 2003, Claimant filed an Amended Statement of Claim naming Respondent JMS as a party in this matter.

On or about October 27, 2004, Claimant notified NASD Dispute Resolution that Counts II, III and IV of the Amended Statement of Claim had been settled and as such, Claimant voluntarily dismissed the claims against Respondent JMS.

On or about November 3, 2004, the Panel issued an Order granting Claimant's Motion to Compel Discovery and directing Respondent Ball to produce all relevant documents in his possession on or before November 19, 2004. Respondent Ball did not produce the relevant documents.

On or about February 18, 2005, the Panel issued an Order deferring its ruling on Claimant's Motion to Dismiss With Prejudice Respondent's Counterclaims and Defenses until the evidentiary hearing.

On or about February 23, 2005, the Panel dismissed Respondent Ball's Counterclaim, without prejudice.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **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:

Respondent Bell is liable on the claim of breach of promissory note and shall pay to Claimant compensatory damages and pre-judgment interest in the amount of \$144,243.42, plus interest at the rate of 6.5% per annum from February 23, 2005 until paid.

Respondent Ball is liable and shall pay to Claimant the sum of \$1,000.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Respondent Ball's Counterclaim is dismissed, without prejudice.

Any and all claims for relief not specifically addressed herein, including the parties' requests for attorneys' fees, are denied.

### **FEES**

Pursuant to the "Code", the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$1,000.00
Counter claim filing fee	= \$ 250.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms Wachovia Securities, Inc. and Janney Montgomery Scott, LLC are parties.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

#### **Adjournment Fees**

Adjournment granted during these proceedings for which fees were assessed:

November 3 – 4, 2004, adjournment by Respondent Ball = \$ 1,125.00

The Panel has assessed \$1,125.00 of the adjournment fees to Respondent Ball.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Ball is solely liable for:

Counterclaim Filing Fee	= \$ 250.00
Adjournment Fee	= \$1,125.00
<u>Forum Fees</u>	<u>= \$3,375.00</u>
Total Fees	= \$4,750.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$4,750.00

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

**ARBITRATION PANEL**

Dale Berman	-	Non-Public Arbitrator, Presiding Chairperson
David E. Mowry	-	Non-Public Arbitrator
Bernard A. D'Amour	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

02/24/2005

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Dale Berman  
Non-Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

/s/

02/24/2005

\_\_\_\_\_  
David E. Mowry  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

/s/

02/28/2005

\_\_\_\_\_  
Bernard A. D'Amour  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

02/28/2005

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Date of Service (For NASD Dispute Resolution office use only)

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