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

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In the Matter of the Arbitration Between:

Names of the Claimants

Joy D. Vogel  
Gregory F. Vogel

Case Number: 03-01817

Names of the Respondents

Wachovia Securities, Inc., f/k/a  
First Union Securities, Inc.  
GE Life and Annuity Assurance Co.  
Mark D. Amos

Hearing Site: Tampa, FL

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

**REPRESENTATION OF PARTIES**

For Joy D. Vogel and Gregory F. Vogel, hereinafter collectively referred to as "Claimants":  
Robert V. Williams, Esq., Williams Schifino Mangione & Steady, P.A., Tampa, FL.

For Respondents Wachovia Securities, Inc., f/k/a First Union Securities, Inc. ("Wachovia"), GE Life and Annuity Assurance Co. ("GE"), and Mark D. Amos ("Amos"), hereinafter collectively referred to as "Respondents": John R. Kiefner, Jr., Esq., Kiefner & Hunt, P.A., St. Petersburg, FL.

**CASE INFORMATION**

Statement of Claim filed on or about: March 13, 2003.

Claimants signed the Uniform Submission Agreement: March 5, 2003.

Statement of Answer filed by Respondents Wachovia and Amos on or about: May 27, 2003.

Respondent Wachovia signed the Uniform Submission Agreement: May 27, 2003.

Respondent Amos signed the Uniform Submission Agreement: June 16, 2003.

Statement of Answer filed by Respondent GE on or about: May 27, 2003.

Respondent GE signed the Uniform Submission Agreement: April 24, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: violation of Florida Statutes Chapter 517; material misrepresentation; omission; unfair or deceptive acts or practices; deceptive and unfair trade practices; negligence; breach of fiduciary duty; fraud; and, negligent supervision. The causes of action relate to the purchase of variable annuities issued by Respondent GE in Claimants' accounts.

Unless specifically admitted in their Answer, Respondents Wachovia and Amos denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in its Answer, Respondent GE denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$364,930.75 plus pre- and post-judgment interest, rescission, costs, and a finding that Claimants were the prevailing parties entitling them to reasonable attorneys' fees by a court of competent jurisdiction pursuant to Florida Statutes §517.211(6).

Respondents Wachovia and Amos requested dismissal of the Statement of Claim, costs, and expungement of all references to the above-captioned arbitration from Respondent Amos' registration records maintained by the NASD Central Registration Depository ("CRD").

Respondent GE requested dismissal of the Statement of Claim, costs, that all forum fees be assessed against Claimants, and such further, necessary, and proper relief as the undersigned arbitrators (the "Panel") deemed just and proper.

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

On or about February 24, 2004, Claimants filed a Notice of Dismissing Specific Claims. In the Notice, Claimants dismissed Counts II through VII of the Statement of Claim. Counts II through VII contained the following causes of action: unfair or deceptive acts or practices; deceptive and unfair trade practices; negligence; breach of fiduciary duty; fraud; and, negligent supervision.

Respondents moved for summary disposition at the conclusion of Claimants' evidentiary presentation. Claimants opposed the motion. Following the argument of counsel, the Panel denied the motion.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Wachovia is liable on the claim of lack of supervision and shall pay to Claimants compensatory damages in the sum of \$106,997.00, pre-judgment interest specifically excluded.

Claimants' request for a finding that Claimants were the prevailing parties entitling them to reasonable attorneys' fees by a court of competent jurisdiction pursuant to Florida Statutes §517.211(6) is denied.

Claimants' request for attorneys' fees is denied.

Claimants' claims for relief against Respondents GE and Amos are dismissed, with prejudice.

The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Amos' registration records maintained by the NASD CRD based upon the defamatory nature of the information in the CRD system, with the understanding that pursuant to

NASD Notices to Members 99-09 and 99-54, Respondent Amos must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Claimants' claims for relief pursuant to Florida Statutes Chapter 517, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 300.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent Wachovia is a member firm and a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were granted during these proceedings for which fees were assessed.

#### **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 assessed during these proceedings.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: October 8, 2003	1 session
Eight (8) Hearing sessions @ \$1,125.00	= \$ 9,000.00
Hearing Dates: February 24, 2004	2 sessions

February 25, 2004	2 sessions
February 26, 2004	2 sessions
February 27, 2004	2 sessions

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Total Forum Fees	= \$ 10,125.00
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The Panel has assessed \$3,375.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$3,375.00 of the forum fees to Respondent Wachovia.

The Panel has assessed \$3,375.00 of the forum fees to Respondent GE.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

#### **Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 3,375.00
Total Fees	= \$ 3,675.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 2,250.00

Respondent Wachovia is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 3,375.00
Total Fees	= \$ 8,575.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 3,375.00

Respondent GE is solely liable for:

<u>Forum Fees</u>	= \$ 3,375.00
Total Fees	= \$ 3,375.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,375.00

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

#### **ARBITRATION PANEL**

Philip C. Bennett, CPA	-	Public Arbitrator, Presiding Chairperson
William H. Fleece, JD	-	Public Arbitrator
Gustavus L. Pearthree	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Philip C. Bennett, CPA  
Public Arbitrator, Presiding Chairperson

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

/s/  
William H. Fleece, JD  
Public Arbitrator

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

/s/  
Gustavus L. Pearthree  
Non-Public Arbitrator

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Signature Date

March 12, 2004  
Date of Service (For NASD Dispute Resolution office use only)

MAR. 8. 2004 4:10PM NASD BOCA RATON

NO. 323 P. 6

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Arbitration No. 03-01817  
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Concurring Arbitrators' Signatures



Philip C. Bennett, CPA  
Public Arbitrator, Presiding Chairperson

3/8/04

Signature Date

William H. Fleece, JD  
Public Arbitrator

Signature Date

Gustavus L. Pearthree  
Non-Public Arbitrator

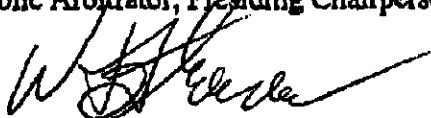
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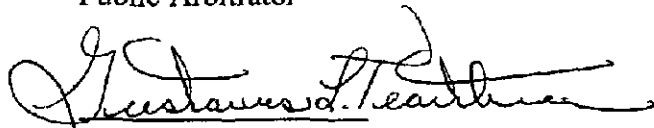
Public Arbitrator, Presiding Chairperson

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Signature Date

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William H. Fleece, JD

Public Arbitrator

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



Gustavus L. Pearthree

Non-Public Arbitrator

3/10/2004  
Signature Date

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