

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

John L. Russo, Claimant

Case Number: - 03-02027

v.

James M. Ford, Joel C. Rolla,
Wunderlich Securities, Inc., Michael D. Ganey,
Patrick James Forkin, III and J. Michael-Patrick, LLC,
Respondents.

Hearing Site: St. Louis, Missouri

NATURE OF THE DISPUTE

Customer vs. Member Firm, Terminated Member and Associated Persons

REPRESENTATION OF PARTIES

Claimant, John L. Russo ("Russo"), hereinafter referred to as "Claimant": Craig J. Concannon, Esq. of St. Louis, Missouri.

Respondent, Wunderlich Securities, Inc. ("Wunderlich") hereinafter referred to as "Respondent Wunderlich": Mark D. Griffin, Esq. of Martin, Tate, Morrow & Marston, P.C., located in Memphis, Tennessee.

Respondents James M. Ford ("Ford"), Joel C. Rolla ("Rolla"), Michael D. Ganey ("Ganey") and Patrick James Forkin, III ("Forkin") all appeared *pro se* in this matter.

Respondent J. Michael-Patrick, LLC is a terminated member and did not appear in this matter.

CASE INFORMATION

Statement of Claim filed on or about February 27, 2003. Claimant Russo signed the Uniform Submission Agreement on March 19, 2003. Claimant filed a first Amended Statement of Claim on July 21, 2003 and a Second Amended Statement of Claim on August 5, 2003.

Respondent, James M. Ford, filed a Statement of Answer on May 26, 2003. Ford signed the Uniform Submission Agreement on May 22, 2003.

Respondent, Wunderlich, filed a Statement of Answer on June 11, 2003. Wunderlich signed the Uniform Submission Agreement on April 11, 2003.

Respondent, Joel C. Rolla, filed a Statement of Answer on June 13, 2003. Rolla signed the Uniform Submission Agreement on June 13, 2003. Respondent Rolla filed an Answer to the Second Amended Statement of Claim and Counterclaim on January 29, 2004.

Respondent, Michael D. Ganey, filed a Statement of Answer to the Second Amended Statement of Claim on or about February 5, 2004. Ganey did not submit a Uniform Submission Agreement.

Respondent, Patrick James Forkin, III, filed a Statement of Answer to the Second Amended Statement of Claim on February 11, 2004. Forkin did not submit a Uniform Submission Agreement.

Respondent J. Michael Patrick, LLC did not submit an Answer to the Statement of Claim.

Respondent Wunderlich Securities filed a Motion to Dismiss on June 11, 2003. Claimant filed his response on July 21, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty, unauthorized trading, churning, omission of facts, suitability, failure to supervise, negligence and misrepresentations.

Unless specifically admitted in their Answer, Respondents Ford, Rolla, Wunderlich Securities, Ganey and Forkin denied the allegations made in the Statement of Claim.

Respondent Wunderlich Securities asserted the following affirmative defenses: (1) Claimant's losses, if any, were sustained as a result of his own negligence, and Claimant voluntarily and willingly assumed the risks of his investments; (2) Claimant failed to mitigate; (3) any damage or losses allegedly suffered by Claimant was the result of market decline and beyond the control of Respondent; (4) doctrines of waiver, ratification, laches and estoppel; (5) Claimant cannot recover under suitability or churning theories because he controlled his accounts and all trades made therein; (6) Claimant's actions for churning and unsuitability are time-barred; (7) Claimant's accounts were handled in accordance with all applicable brokerage industry standards, guidelines and requirements; (8) Claimant fails to state a factual basis for his claims for relief with respect to Wunderlich; (9) equitable estoppel; (10) Claimant has no cause of action for failure to supervise; (11) no scienter; (12) no authority/knowledge; and (13) failure to state a claim for corporate successor liability.

Respondents Rolla, Ganey and Forkin asserted the following defenses: (1) Claimant is barred from recovering under Claimant's Customer Agreement; (2) Claimant is barred from recovering under the doctrines of ratification, account stated, estoppel, waiver and laches; (3) Claimant failed to act promptly and with due diligence to mitigate Claimant's damages, therefore, Claimant is barred from recovering such damages; (4) Claimant caused or contributed to cause the alleged damages of which Claimant complains herein and is thus barred by his contributory negligence from recovering such damages; (5) Claimant was aware of the risks associated with investing in securities and voluntarily assumed such risks, and was the sole and proximate cause of Claimant's alleged damages; (6) damages allegedly suffered by Claimant were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in Claimant's account for which Respondents Rolla, Ganey and Forkin are not liable or responsible; (7) the Statement of Claim fails to state a claim against Respondents Rolla, Ganey and Forkin upon which relief can be granted; (8) Respondents Rolla, Ganey and Forkin are not liable to Claimant under the theory of *respondeat superior*; and (9) some, if not all, of Claimant's claims are barred by the applicable statutes of limitations.

RELIEF REQUESTED

Claimants requested \$300,000.00 in compensatory and punitive damages, attorney's fees and costs.

Respondents requested that the Statement of Claim and the amendments thereto be dismissed in their entirety with prejudice, and that the Panel award Respondents' their attorney's fees and costs. Respondents further requested expungement of this matter from each respective Respondent's CRD record maintained by the NASD.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, the parties reached a full and final settlement of all claims at issue in the dispute and requested that the action be dismissed with prejudice. The parties further requested that all references to this arbitration and/or underlying dispute be expunged from each one of the Respondents' CRD records.

The parties further agreed that any and all outstanding costs or fees due to the NASD shall be split 50/50 as set forth in the Panel's Initial Pre-hearing Scheduling Order dated March 25, 2004.

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.

Due to parties' settlement, Wunderlich Securities' Motion to Dismiss was never ruled upon by the Panel.

AWARD

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) All claims against Respondents are dismissed with prejudice;
- 2.) Any and all outstanding fees and expenses due to the NASD shall be split equally between the parties;
- 3.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents James Matthew Ford, J. Christopher Rolla, Michael D. Ganey, Patrick J. Forkin, III and Wunderlich Securities' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Ford, Rolla, Ganey, Forkin and Wunderlich Securities must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive
- 5.) That any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

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 = \$ 300.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Forum Fees and Assessments

The 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 Panel x \$1,125.00 = \$1,125.00

Pre-hearing conference: March 25, 2004 1 session

Total Forum Fees = \$1,125.00

The parties have agreed to split forum fees equally as follows:

Claimant Russo shall pay \$187.50

Respondents Wunderlich, Ford, Rolla, Ganey and Forkin shall each pay \$187.50

FEE SUMMARY

1. Claimant Russo is hereby solely liable for:

Initial Filing Fee = \$ 300.00

Forum Fees = \$ 187.50

Total Fees = \$ 487.50

Less payments = \$1,987.50

Refund Due from NASD Dispute Resolution = \$1,500.00

2. Respondent, Wunderlich Securities, Inc., is hereby solely liable for:

Member Fees = \$5,200.00

Forum Fees = \$ 187.50

Total Fees = \$5,287.50

Less payments = \$5,200.00

Balance Due NASD Dispute Resolution = \$ 187.50

3. Respondent, Joel C. Rolla, is hereby solely liable for:
- | | |
|---|-------------|
| Counter-Claim Filing Fee | = \$ 250.00 |
| Forum Fees | = \$ 187.50 |
| Total Fees | = \$ 437.50 |
| Less payments | = \$ 975.00 |
| Refund Due from NASD Dispute Resolution | = \$ 537.50 |
4. Respondent, James M. Ford, is solely liable for:
- | | |
|-------------------------------------|-------------|
| Forum Fees | = \$ 187.50 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 187.50 |
5. Respondent, Michael D. Ganey, is solely liable for:
- | | |
|-------------------------------------|-------------|
| Forum Fees | = \$ 187.50 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 187.50 |
6. Respondent, Patrick James Forkin, III, is solely liable for:
- | | |
|-------------------------------------|-------------|
| Forum Fees | = \$ 187.50 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 187.50 |

All balances are due to NASD Dispute Resolution.

ARBITRATION PANEL

R. Phillip Reed, Esq.	-	Public Arbitrator, Presiding Chairperson
Robert Gregory Bailey	-	Public Arbitrator
Linda M. Schramm	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

R. Phillip Reed, Esq.
Public Arbitrator, Presiding Chair

10/21/04
Signature Date

Robert Gregory Bailey
Public Arbitrator

10/21/04
Signature Date

Linda M. Schramm
Non-Public Arbitrator

10/21/04
Signature Date


10/22/04
Date of Service (For NASD office use only)

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ARBITRATION PANEL

R. Phillip Reed, Esq.	-	Public Arbitrator, Presiding Chairperson
Robert Gregory Bailey	-	Public Arbitrator
Linda M. Schramm	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



R. Phillip Reed, Esq.
Public Arbitrator, Presiding Chair

21 October 2004

Signature Date

Robert Gregory Bailey
Public Arbitrator

Signature Date

Linda M. Schramm
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

R. Phillip Reed, Esq.	-	Public Arbitrator, Presiding Chairperson
Robert Gregory Bailey	-	Public Arbitrator
Linda M. Schramm	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

R. Phillip Reed, Esq.
Public Arbitrator, Presiding Chair

Signature Date

R. Gregory Bailey

Robert Gregory Bailey
Public Arbitrator

0721, 2004

Signature Date

Linda M. Schramm
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

R. Philip Reed, Esq.
Robert Gregory Bailey
Linda M. Schramm

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

R. Philip Reed, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Robert Gregory Bailey
Public Arbitrator

Signature Date

Linda M. Schramm
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)