

## **AWARD**

### **NASD Dispute Resolution**

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Frederick Westerfield individually and on behalf of his IRA vs. Wachovia Securities, Inc. n/k/a Wachovia Securities, LLC. and Milliet K. Lanham

Arbitration Number: 03-02046

Hearing Location: Baltimore, Maryland

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

### **REPRESENTATION OF PARTIES**

Claimant, Frederick Westerfield, individually and on behalf of his IRA ("Claimant"), was represented by Ford C. Ladd, Esq., The Law Offices of Ford C. Ladd, Alexandria, Virginia.

Respondents, Wachovia Securities, Inc. n/k/a Wachovia Securities, LLC. ("Wachovia"), and Milliet K. Lanham ("Lanham"), hereinafter collectively referred to as "Respondents", were represented by Mark J. Astarita, Esq., Beam & Astarita, LLC, Bloomfield, New Jersey.

### **CASE INFORMATION**

Statement of Claim filed on March 19, 2003.

Claimant signed the Uniform Submission Agreement on March 19, 2003.

Statement of Answer filed by Respondents on May 21, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action, among others: violation of Section 10(b) of the Securities and Exchange Act of 1934 and S.E.C. Rule 10b-5, 17 C.F.R. § 240 10b-5 promulgated thereunder; violation of Section 20(a) of the Securities and Exchange Act of 1934, and failure to supervise; violation of the Maryland Securities Act; violation of the NASD Rules of Fair Practice; breach of contract; breach of fiduciary duty; and constructive fraud. The causes of action relate to the purchase and sale of various securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to mitigate damages; the Statement of Claim fails to plead fraud with the requisite particularity; Claimant fails to state a claim upon which relief can be granted; and Claimant is barred from recovery by the doctrines of laches, waiver, estoppel, and ratification.

### **RELIEF REQUESTED**

Claimant in his Statement of Claim requested:

Compensatory Damages	\$822,990.69
Punitive Damages	\$177,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Arbitration Panel (the "Panel") dismiss the proceeding in its entirety; award Respondents their costs, disbursements and attorneys' fees; and assess all forum fees against Claimant.

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

Respondents Wachovia and Lanham did not file with NASD Dispute Resolution, properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearings are bound by the determination of the Panel on all issues submitted.

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.

### **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:

1. Respondents Wachovia and Lanham are liable to and shall pay to Claimant compensatory damages in the amount of \$300,000.00;
2. All claims for punitive damages and attorneys' fees are denied in their entirety;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein is denied in its entirety.

### **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 = \$ 375.00

### 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(s) at the time of the events giving rise to the dispute. Accordingly, Wachovia is a party.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00
<u>Total Member Fees</u>	<u>= \$ 7,000.00</u>

### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

July 26-29 2004 adjournment by Claimant	fee waived by Panel
April 4-7, 2005 adjournment by the parties	= \$ 1,200.00

### 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:

Three (3) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 3,600.00
Pre-hearing conferences:	
December 15, 2003	1 session
March 23, 2005	1 session
December 21, 2005	1 session

Fourteen (14) Hearing sessions @ \$1,200.00	= \$16,800.00
Hearing Dates:	
July 11, 2005	2 sessions
July 12, 2005	2 sessions
July 13, 2005	2 sessions
July 14, 2005	2 sessions
July 15, 2005	1 session
December 19, 2005	1 session
August 14, 2006	2 sessions
August 15, 2006	2 sessions

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Total Forum Fees	= \$20,400.00
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1. The Panel has assessed \$10,200.00 of the forum fees to Claimant.
2. The Panel has assessed \$10,200.00 of the forum fees jointly and severally to Respondents.

### FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$10,200.00
Total Fees	= \$11,175.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 9,600.00

2. Respondent Wachovia is assessed and shall pay the following fees:

Member Fees	= \$ 7,000.00
Total Fees	= \$ 7,000.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 00.00

5. Respondents are jointly and severally assessed and shall pay the following fees:

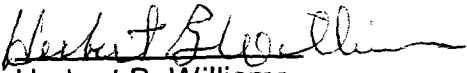
Adjournment Fees	= \$ 600.00
Forum Fees	= \$10,200.00
Total Fees	= \$10,800.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$10,800.00

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

### ARBITRATION PANEL

Herbert B. Williams	- Public Arbitrator, Presiding Chairperson
Wilbert H. Luck, Sr.	- Public Arbitrator, Panelist
Wayne J. Thaemert	- Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**



Herbert B. Williams

Public Arbitrator, Presiding Chairperson

8/22/06  
Signature Date

Wilbert H. Luck, Sr.

Public Arbitrator, Panelist

Signature Date

Wayne J. Thaemert

Non-Public Arbitrator, Panelist

Signature Date

9/12/06  
Date of Service (For NASD Dispute Resolution office use only)

**Concurring Arbitrators' Signatures**

Herbert B. Williams  
Public Arbitrator, Presiding Chairperson

Signature Date

Wilbert H. Luck, Sr.  
Wilbert H. Luck, Sr.  
Public Arbitrator, Panelist

8/21/06  
Signature Date

Wayne J. Thaemert  
Non-Public Arbitrator, Panelist

Signature Date

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Public Arbitrator, Presiding Chairperson

Signature Date

Wilbert H. Luck, Sr.  
Public Arbitrator, Panelist

Signature Date

Wayne J. Thiemert  
Wayne J. Thiemert  
Non-Public Arbitrator, Panelist

8/21/06  
Signature Date

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