

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 03-02298

Henrietta B. Bennett

Names of the Respondents

Hearing Site: Charlotte, North Carolina

Wachovia Securities Financial Network, Inc.

James Preston Covington, III

Wachovia Securities, LLC

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

**REPRESENTATION OF PARTIES**

Claimant Henrietta B. Bennett, hereinafter referred to as "Claimant", was represented by Gerald D. Jowers, Esq., Suggs & Kelly Lawyers, P.A., Columbia, South Carolina.

Respondent Wachovia Securities Financial Network was represented by Douglas F. Wilburn, Wachovia Securities Financial Network, Inc., Richmond, Virginia.

Respondents James Preston Covington, III ("Covington") and Wachovia Securities, LLC ("Wachovia"), hereinafter collectively referred to as "Respondents", were represented by Todd Ratner, Esq., Wachovia Securities Inc., Richmond, Virginia.

**CASE INFORMATION**

Statement of Claim filed on March 28, 2003.

Claimant signed the Uniform Submission Agreement on March 27, 2003.

Claimant's Dismissal of Claims Asserted Against Respondent Wachovia Securities Financial Network, Inc. was filed on August 22, 2003.

Statement of Answer filed by Respondent Wachovia on July 18, 2004.

Respondent Covington filed a letter adopting Respondent Wachovia's Statement of Answer of August 18, 2004.

Respondent Covington signed the Uniform Submission Agreement on July 17, 2003.

Todd Ratner, Assistant Vice-President and Counsel, executed Respondent Wachovia's Uniform Submission Agreement on July 18, 2003.

Claimant's Pre-Hearing Motion to Exclude Evidence was filed on June 29, 2004.

Claimant's Motion for Sanctions was filed on August 24, 2004.

Respondent's Response to the Motion for Sanctions was filed on August 25, 2004.

### CASE SUMMARY

Claimant asserted the following causes of action, among others: breach of contract, fraud, negligence, gross negligence, violation of SRO rules, constructive fraud, fraudulent concealment, unsuitability, failure to supervise, breach of fiduciary duty, violation of federal securities laws, and state securities fraud. The causes of action relate to purchase of GoldenSelect DVA Plus Deferred Variable Annuity.

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 state a claim upon which relief may be granted, laches, unclean hands, estoppel, contributory negligence, waiver, authorization, ratification, assumption of risk, failure to mitigate, Respondent Wachovia maintained adequate supervisory systems, and statutes of limitations.

### RELIEF REQUESTED

Claimant in requested:

Compensatory Damages	\$35,000.00-40,000.00
Punitive Damages	\$120,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Panel reject the claim in its entirety, order that all costs of this arbitration be borne by the Claimant, and award Respondents such other and further relief as is deemed just and proper.

### OTHER ISSUES CONSIDERED AND DECIDED

At the hearing on the merits, Claimant withdrew her motion for sanctions.

At the hearing on the merits, Respondent orally objected to Claimant's Motion to Exclude. The Panel granted said motion.

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 Covington are jointly and severally liable to and shall pay to Claimant compensatory damages in the amount of \$3,500.00;
2. Respondents Wachovia and Covington are jointly and severally liable to and shall pay to Claimant costs of her expert witness in the amount of \$2,500.00;
3. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein, including punitive damages, 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 = waived by NASD

##### 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. Accordingly, Respondents Wachovia and Wachovia Securities Financial Network, Inc. were parties.

##### Respondent Wachovia's Member Fees

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

##### Respondent Wachovia Securities Financial Network, Inc.'s Member Fees

Member surcharge	= \$1,700.00
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##### 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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: July 26, 2004 1 session	

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00  
Pre-hearing conference: February 3, 2004 1 session

Two (2) Hearing sessions @ \$1,125.00 = \$2,250.00  
Hearing Dates: August 30, 2004 2 sessions

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Total Forum Fees = \$3,825.00

2. The Panel has assessed \$3,825.00 of the forum fees jointly and severally to Respondents Wachovia and Covington.

#### FEE SUMMARY

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

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

2. Respondent Wachovia Financial Services Network, Inc. is assessed and shall pay the following fees:

Member Fees	= \$1,700.00
Total Fees	= \$1,700.00
Less payments	= \$1,700.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Wachovia and Covington are jointly and severally assessed and shall pay the following fees:

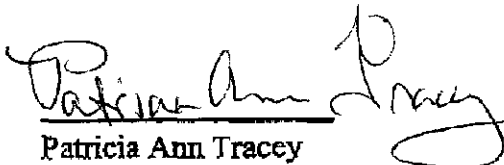
Forum Fees	= \$3,825.00
Total Fees	= \$3,825.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,825.00

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

#### ARBITRATION PANEL

Patricia Ann Tracey	-	Public Arbitrator, Presiding Chairperson
Frances Johnson Wright, J.D.	-	Public Arbitrator, Panelist
Frances E. Hubbell	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Patricia Ann Tracey  
Public Arbitrator, Presiding Chairperson

9/2/04

Signature Date

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Frances Johnson Wright, J.D.  
Public Arbitrator, Panelist

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Signature Date

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Frances E. Hubbell  
Non-Public Arbitrator, Panelist

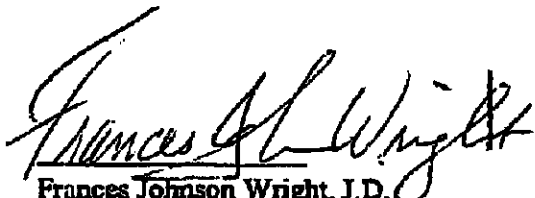
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Signature Date

September 10, 2004  
Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson

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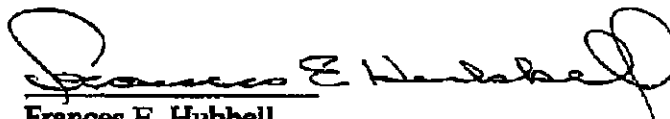
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