

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Robert Bruce Hoy, Jr.

Case Number: 03-02491

Name of the Respondents  
Wachovia Securities, Inc. (formally  
known as First Union Securities, Inc.  
and Wheat First Union, Inc.)

Hearing Site: Philadelphia, PA

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Claimant, Robert Bruce Hoy, Jr., hereinafter referred to as "Claimant", was represented by Steven B. Caruso, Esq., Maddox, Hargett & Caruso, P.C., New York, New York.

Respondent, Wachovia Securities, Inc. (formally known as First Union Securities, Inc. and Wheat First Union, Inc.), hereinafter referred to as "Respondent", was represented by Brian A. Carlis, Esq., Stark & Stark, P.C., Lawrenceville, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on April 4, 2003.

Claimant signed the Uniform Submission Agreement on March 28, 2003.

Statement of Answer filed by Respondent on June 30, 2003.

A representative of Respondent signed the Uniform Submission Agreement on June 26, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: misrepresentation of material facts; omission of material facts; unsuitable trading; failure to supervise; violations of Securities Exchange Act of 1934; fraud; negligence; breach of contract; breach of fiduciary duty; *respondeat superior*; violation of New York Stock Exchange rules; violation of NASD conduct rules; violation of American Stock Exchange rules; violation of New Jersey Securities Act; violation of Pennsylvania Securities Act; violation of New Jersey Consumer Protection Act; and violation of Pennsylvania Consumer Protection Act. The causes of action relate to the purchase and sale of common stocks, "Class B" mutual funds and some short put option positions.

Unless specifically admitted in its Answer, Respondent 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; approval and authorization; ratification; laches, waiver and estoppel; failure to mitigate; assumption of the risk; and, statute of limitations.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$ 875,000.00; statutory remedies, costs, attorneys' fees, punitive damages, pre-judgment and post judgment interest and forum fees in unspecified amounts; and such other relief as may be deemed just, proper and equitable.

Respondent requested that the Arbitration Panel (the "Panel") dismiss the Statement of Claim in its entirety, award Respondent its costs and attorney's fees and any other relief as is just and proper.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable to and shall pay to Claimant three hundred sixty thousand dollars and no cents (\$360,000.00) in compensatory damages;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
3. 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	= \$ 375.00
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#### **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 person at the time of the events giving rise to the dispute. Accordingly, Wachovia Securities, Inc. is a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

**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:

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$1,200.00  
Pre-hearing conference: December 1, 2003 1 session

Eight (8) Hearing sessions @ \$1,200.00 = \$9,600.00  
Hearing Dates: September 28, 2004 2 sessions  
September 29, 2004 2 sessions  
September 30, 2004 2 sessions  
October 1, 2004 2 sessions

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Total Forum Fees = \$10,800.00

1. The Panel has assessed \$5,400.00 of the forum fees to Claimant.
2. The Panel has assessed \$5,400.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 5,400.00
Total Fees	= \$ 5,775.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 4,200.00
2. Respondent is assessed and shall pay:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 5,400.00
Total Fees	= \$12,400.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 5,400.00

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

**ARBITRATION PANEL**

Robin David Blecher, Esq.  
Joseph Straus, Jr.  
Jack H. McNairy

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator, Panelist  
- Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**



Robin David Blecher, Esq.  
Public Arbitrator, Presiding Chairperson

12/25/04  
Signature Date

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Joseph Straus, Jr.  
Public Arbitrator, Panelist

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Signature Date

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Jack H. McNairy  
Non-Public Arbitrator, Panelist

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Signature Date

Oct 26, 2004  
Date of Service (For NASD Dispute Resolution office use only)

**ARBITRATION PANEL**


Robin David Bleacher, Esq.  
Joseph Straus, Jr.  
Jack H. McNairy

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

Robin David Bleacher, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
Joseph Straus, Jr.  
Public Arbitrator, Panelist

10/23/04  
Signature Date

\_\_\_\_\_  
Jack H. McNairy  
Non-Public Arbitrator, Panelist

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

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Robin David Bleacher, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

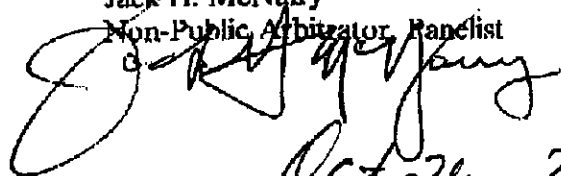
Joseph Straus, Jr.  
Public Arbitrator, Panelist

Signature Date

Jack H. McNairy  
Non-Public Arbitrator, Panelist

Signature Date

10/26/04



Oct 26, 2004

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