

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kathy L. Kessel and Kathy L. Kessel IRA (Claimants) v. Wachovia Securities, LLC., and Michael A. Ewanouski (Respondents)

Case Number: 03-02543

Hearing Site: Boston, Massachusetts

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

REPRESENTATION OF PARTIES

Claimants Kathy L. Kessel ("Kessel") and Kathy L. Kessel IRA ("Kessel IRA") hereinafter collectively referred to as "Claimants": Edmund Polubinski, Jr., Esq., Zimble & Brettler, LLP, Boston, MA.

Respondents Wachovia Securities, LLC ("Wachovia") and Michael A. Ewanouski ("Ewanouski") hereinafter collectively referred to as "Respondents": David L. Ward, Esq. and Pete S. Michaels, Esq., Murphy & Michaels, LLP, Boston, MA. Previously represented by: Scott M. Murray, Esq., Wachovia Securities, Inc., Richmond, VA.

CASE INFORMATION

Statement of Claim filed on or about: March 31, 2003.

Response to Respondents' Motion to Dismiss filed by Claimant on or about: June 24, 2003.

Kessel signed the Uniform Submission Agreement: March 27, 2003.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: June 6, 2003.

Wachovia signed the Uniform Submission Agreement: June 6, 2003.

Ewanouski signed the Uniform Submission Agreement: June 10, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: misrepresentation; omission of facts; and suitability. Claimants' claim involved certificates of deposit, shares of Elot, Inc., UPS-B, Medtronic, Inc., MCI Worldcom, Inc., Information Architects Corp., Intasys Corp., AOL, Inc., Millenium Pharm., Intellidata T. Corp., CMGL, Inc., Scient, Cisco Systems, Inc., Sandisk Corp., and Amgen.

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

RELIEF REQUESTED

Claimants requested damages in the amount of \$172,889.20; punitive damages in the amount of \$345,778.40; attorneys' fees and costs.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety; order expungement of this matter from Ewanouski's Central Registration Depository ("CRD") record; award Respondents their costs and attorneys' fees expended in defense of this matter; assign all forum fees and costs to Claimants and award any other relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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, and 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. Claimants' claims are hereby denied in their entirety.
2. Respondent Ewanouski's Request for Expungement of his CRD records is denied.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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, LLC. 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 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 @ \$1,200.00 = \$1,200.00
Pre-hearing conference: September 4, 2003 1 session

Four (4) Hearing sessions @ \$1,200.00 = \$4,800.00
Hearing Dates: January 26, 2004 2 sessions
January 27, 2004 2 sessions

Total Forum Fees = \$6,000.00

1. The Panel has assessed \$3,000.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$3,000.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$3,000.00</u>
Total Fees	= \$3,375.00
<u>Less payments</u>	<u>= \$1,700.00</u>
Balance Due NASD Dispute Resolution	= \$1,675.00
2. Wachovia is solely liable for:

<u>Member Fees</u>	<u>= \$7,000.00</u>
Total Fees	= \$7,000.00
<u>Less payments</u>	<u>= \$7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$3,000.00</u>
Total Fees	= \$3,000.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$3,000.00


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

ARBITRATION PANEL

Tom L. Peterson, Esq.	-	Public Arbitrator, Presiding Chair
William George Hayward, Jr., Esq.	-	Public Arbitrator
John A. Morin, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.


Tom L. Peterson, Esq.
Public Arbitrator, Presiding Chairperson

Feb. 8, 2004
Signature Date

William George Hayward, Jr., Esq.
Public Arbitrator

Signature Date

John A. Morin, Esq.
Non-Public Arbitrator

Signature Date

February 13, 2004

Date of Service (For NASD Dispute Resolution use only)

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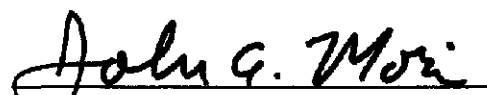
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Signature Date

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