

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Case Number: 03-03602

Gary M. Stewart
Christopher R. Stewart
Robert Stewart

Name of the Respondent

Hearing Site: Richmond, Virginia

Wachovia Securities Financial Network, Inc.
f/k/a First Union Securities Financial Network, Inc.

Nature of the Dispute: Associated Persons vs. Member.

REPRESENTATION OF PARTIES

Claimants, Gary M. Stewart, Christopher R. Stewart, and Robert Stewart, hereinafter collectively referred to as "Claimants", were represented by William G. Shields, Esq., William G. Shields & Associates, Richmond, Virginia.

Respondent, Wachovia Securities Financial Network, Inc. f/k/a First Union Securities Financial Network, Inc., hereinafter referred to as "Respondent", was represented by Harris L. Kay, Esq., LeClair Ryan, Richmond, Virginia.

CASE INFORMATION

Statement of Claim filed on May 13, 2003.

Claimant Robert Stewart signed the Uniform Submission Agreement on June 13, 2003.

Claimant Gary M. Stewart signed the Uniform Submission Agreement on June 15, 2003.

Claimant Christopher R. Stewart signed the Uniform Submission Agreement on June 15, 2003.

Statement of Answer and Counterclaim filed by Respondent on September 10, 2003.

Respondent did not file a Uniform Submission Agreement with NASD Dispute Resolution.

Claimant's Response to Respondent's Counterclaim was filed on November 20, 2003.

Respondent's Motion to Dismiss was filed on January 29, 2004.

Claimants' Response to Motion to Dismiss was filed on February 17, 2004.

CASE SUMMARY

Claimants asserted the following causes of action, among others: violation of Virginia Retail Franchising Act, breach of contract, and tortious interference with contract and business expectancy. The causes of action relate to Claimants' business relationship with Respondent.

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, failure to mitigate, and ratification.

In its Counterclaim, Respondent asserted causes of action for indemnification against Claimants.

Unless specifically admitted in their Answer, Claimants denied the allegations made in the Counterclaim and asserted a defense that Respondent failed to state a cognizable action at law or in equity.

RELIEF REQUESTED

Claimant Gary Stewart requested a total of \$750,000.00 in compensatory damages. Claimants Christopher and Robert Stewart each request \$250,000.00 in compensatory damages. Claimants also requested attorneys' fees, costs, and such other amounts as may be supported at law and equity.

Respondent in its Statement of Answer requested an award of all costs and fees, attorneys' fees, and indemnification of any award issued in this matter.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

By Order dated March 4, 2004, the Panel granted Respondent's Motion to Dismiss and dismissed Count I of the Statement of Claim.

Claimant Robert Stewart did not appear at the hearing on the merits. At the hearing, Claimant Robert Stewart's attorney withdrew his claims against Respondent.

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, 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 Gary Stewart compensatory damages in the amount of \$200,000.00;
2. Respondent is liable to and shall pay to Claimant Christopher Stewart compensatory damages in the amount of \$100,000.00;
3. Respondent is liable to and shall pay to Claimants Gary Stewart and Christopher Stewart attorneys' fees in the amount of \$19,579.76, pursuant to Florida Statute 57.105;
4. Respondent is liable to and shall pay to Claimants Gary Stewart and Christopher Stewart costs in the amount of \$451.26;
5. Respondent is liable to and shall pay to Claimants Gary Stewart and Christopher Stewart partial reimbursement of the claim filing fee in the amount of \$333.33;
6. Respondent's Counterclaim is denied in its entirety;
7. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
8. 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	= \$ 500.00
Counterclaim filing fee	= \$ 2,000.00

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, Respondent is a party.

Member surcharge	= \$ 2,800.00
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Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00
Total Member Fees	= \$ 8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 24-26, 2004, adjournment assessed to parties = \$ 1,200.00

1. The Panel has assessed \$600.00 of the forum fees jointly and severally to Claimants
2. The Panel has assessed \$600.00 of the forum fees to Respondent.

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: March 25, 2004 1 session	

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: January 22, 2004 1 session	

Four (4) Hearing sessions @ \$1,200.00	= \$ 4,800.00
Hearing Dates: July 13, 2004 2 sessions	
July 14, 2004 2 sessions	

Total Forum Fees	= \$ 6,450.00
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1. The Panel has assessed \$1,612.50 of the forum fees to Claimant Gary Stewart
2. The Panel has assessed \$1,612.50 of the forum fees to Claimant Christopher Stewart
3. The Panel has assessed \$3,225.00 of the forum fees Respondent.

FEE SUMMARY

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

Forum Fees	= \$ 1,612.50
Total Fees	= \$ 1,612.50
Less payments	= \$ 700.00
Balance Due NASD Dispute Resolution	= \$ 912.50

2. Claimant Christopher Stewart is assessed and shall pay the following fees:

Forum Fees	= \$ 1,612.50
Total Fees	= \$ 1,612.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,612.50

3. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 600.00
Total Fees	= \$ 1,100.00
Less payments	= \$ 1,100.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondent is assessed and shall pay the following fees:

Filing Fee	= \$ 2,000.00
Member Fees	= \$ 8,550.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 3,225.00
Total Fees	= \$14,375.00
Less payments	= \$10,050.00
Balance Due NASD Dispute Resolution	= \$ 4,325.00

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

ARBITRATION PANEL

Donita M. King, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Nickey D. Turner	-	Non-Public Arbitrator, Panelist
John E. Baynum, Sr.	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Donita M. King, Esq.
Non-Public Arbitrator, Presiding Chairperson

7/28/2004
Signature Date

Nickey D. Turner
Non-Public Arbitrator, Panelist

Signature Date

John E. Baynum, Sr.
Non-Public Arbitrator, Panelist


Signature Date

August 5, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Donita M. King, Esq.
Non-Public Arbitrator, Presiding Chairperson

Signature Date



Nickey D. Turner
Non-Public Arbitrator, Panelist

7/29/04

Signature Date

John E. Baynam, Sr.
Non-Public Arbitrator, Panelist

Signature Date

August 5, 2004

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

Concurring Arbitrators' Signatures

Donita M. King, Esq.

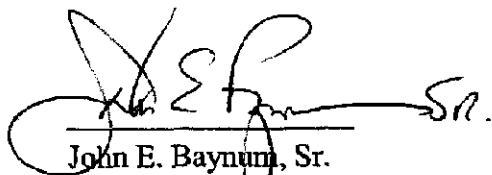
Non-Public Arbitrator, Presiding Chairperson

Signature Date

Nickey D. Turner

Non-Public Arbitrator, Panelist

Signature Date

_____
John E. Baynum, Sr.

Non-Public Arbitrator, Panelist

8-3-04

Signature Date

August 5, 2004
Date of Service (For NASD Dispute Resolution office use only)