

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

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In the Matter of the Arbitration Between:

Wachovia Securities, LLC f/k/a Wachovia Securities, Inc., Claimant v. Donald A. Duarte, Jr.  
Respondent

Case Number: 03-04580

Hearing Site: Los Angeles, California

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Nature of the Dispute: Member v. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

Diane C. Fischer, Esq.  
Robert C. Scremin, Esq.  
Kane & Fischer, Ltd.  
Chicago, Illinois

For Respondent:

In Propria Persona

**CASE INFORMATION**

Initial Statement of Claim filed: June 23, 2003

Amended Statement of Claim filed: July 23, 2003

Claimant's Uniform Submission Agreement signed: April 3, 2003

Statement of Answer filed by Respondent: September 23, 2003

Respondent's Uniform Submission Agreement signed: None Filed

**CASE SUMMARY**

Claimant alleged non-payment of the outstanding balance due on a Promissory Note entered into between Claimant and Respondent on or about December 11, 2000.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statements of Claim.

### **RELIEF REQUESTED**

Claimant requested the principal balance due under the Promissory Note in the amount of \$26,587.72, interest accrued during the term of the note at a rate of 6.5% in the amount of \$14.19, interest accrued on the balance due on the note from September 3, 2002 to the date of payment, and costs, including attorney's fees.

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

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

On July 23, 2003, Claimant filed an Amended Statement of Claim pursuant to Rule 10328(a) of the NASD Code of Arbitration Procedure.

On July 23, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On June 29, 2004, NASD Dispute Resolution received notice of settlement from Claimant.

### **STIPULATION**

The parties stipulated to the entry of this Stipulated Award in the event Respondent Donald A. Duarte, Jr. fails to comply with the payment terms set forth in the Settlement Agreement entered into between the parties in June 2004. Pursuant to the Settlement Agreement, Respondent Donald A. Duarte, Jr. waived any right to an Arbitration hearing.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

After considering the pleadings, testimony, and the Parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants and Respondents have entered into a confidential settlement agreement.
2. Respondent Donald A. Duarte, Jr. is liable to and shall pay Claimant the sum of \$40,913.54, in compensatory damages, less any payments made under the Settlement Agreement entered into by the parties in June 2004.
3. Respondent Donald A. Duarte, Jr. is liable to and shall pay Claimant interest at the rate of 7% per annum on the sum of \$40,913.54 from June 25, 2004 until payment of this Award is made in full, pursuant to contract.
4. The Parties shall bear their respective costs, including attorney's fees.
5. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 1,000.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Wachovia Securities, LLC f/k/a Wachovia Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 600.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 1,000.00
<b>Total Member Fees</b>	<b>= \$ 2,350.00</b>

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$ 600.00/session	= \$	600.00
Pre-hearing conference: March 2, 2004	1 session	

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<b>Total Forum Fees</b>	<b>= \$</b>	<b>600.00</b>
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1. The Panel assessed \$ 300.00 of the forum fees to Claimant.
2. The Panel assessed \$ 300.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$	1,000.00
Member Fees	= \$	2,350.00
Forum Fees	= \$	300.00
Hearing Session Deposit Retained Pursuant to Rule 10332(f)	= \$	300.00
Total Fees	= \$	3,950.00
Less payments	= \$	(3,800.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$</b>	<b>150.00</b>


2. Respondent is charged with the following fees and costs:

Forum Fees	= \$	300.00
Less payments	= \$	(0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$</b>	<b>300.00</b>

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

**ARBITRATION PANEL**

<b>James F. Schmidt</b>	-	<b>Non-Public Arbitrator, Presiding Chair</b>
<b>Michael G. Clark</b>	-	<b>Non-Public Arbitrator</b>
<b>Sam Yellen</b>	-	<b>Non-Public Arbitrator</b>

  
James F. Schmidt  
Chair, Non-Public Arbitrator

Oct 28, 2004  
Signature Date

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Michael G. Clark  
Non-Public Arbitrator

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

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Sam Yellen  
Non-Public Arbitrator

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

10/29/04  
Date of Service

**ARBITRATION PANEL**

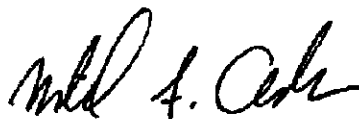
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<b>Sam Yellen</b>	-	<b>Non-Public Arbitrator</b>

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James F. Schmidt  
Chair, Non-Public Arbitrator

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Signature Date



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Michael G. Clark  
Non-Public Arbitrator

October 29, 2004  
Signature Date

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Sam Yellen  
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10/29/04  
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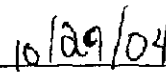
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Sam Yellen  
Non-Public Arbitrator

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