

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Susan P. Hollern, Trustee of the William H. Price, II, Trust

v.

03-05197

Denver, Colorado

Respondents

Wachovia Securities, LLC and Randall S. Russell

Nature of Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

Susan P. Hollern, Trustee of the William H. Price, II, Trust, ("Claimant") was represented by Michael G. Martin, Esq., and Susan Hollern, Esq., of Snell & Wilmer, L.L.P., Denver, Colorado.

Wachovia Securities, LLC ("Wachovia") and Randall S. Russell ("Russell"), hereinafter referred to as "Respondents," were represented by Michael N. Ungar, Esq. and Joseph S. Simms, Esq., of Ulmer & Berne LLP, Cleveland, Ohio.

CASE INFORMATION

The Statement of Claim was filed on or about July 15, 2003. The Submission Agreement of Claimant was signed on or about July 11, 2003.

The Statement of Answer was filed jointly by Respondents, Wachovia Securities, LLC and Randall S. Russell, on or about November 6, 2003. The Submission Agreement of Respondent, Wachovia Securities, LLC, was signed on or about November 6, 2003. The Submission Agreement of Respondent, Randall S. Russell, was signed on or about August 26, 2003.

Respondents filed a Motion to Change Hearing Venue on or about October 8, 2003.

Claimant filed a Response in Opposition to the Motion to Change Hearing Venue on or about October 29, 2003.

Respondents filed a Reply Brief in Support of their Motion to Change Hearing Venue on or about November 7, 2003.

Respondents filed a Renewed Motion to Change Hearing Venue on or about March 16, 2004.

Claimant filed a Response in Opposition to the Renewed Motion to Change Hearing Venue on or about April 1, 2004.

Respondents filed a Reply Brief in Support of their Renewed Motion to Change Hearing Venue on or about April 15, 2004.

Respondents filed a Motion For Summary Judgment on or about September 17, 2004.

Claimant filed a Response in Opposition to the Motion For Summary Judgment on or about October 1, 2004.

CASE SUMMARY

Claimant asserted causes of action including the following: breach of fiduciary duty and negligence. The causes of action related to Claimant's allegation that Respondents took no action to communicate with William Price's family or make any adjustments to his portfolio, after his hospitalization and subsequent death. Claimant alleged that because of this lack of communication, the unsuitability of the portfolio, which consisted of various telecommunication stocks, technology stocks, and naked put options in Tyco International, Inc., the Trust sustained losses. Claimant asserted that Respondents had a fiduciary responsibility to the Trust to inform family members, during the time William Price was incapacitated, of information so they could make investment decisions and manage the Trust's account. Claimant also alleged that Respondents did not take appropriate actions to stop losses in the Trust's account until after the death of William Price.

Respondents denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Respondents, in discharging their duties, acted in good faith and exercised at least that degree of care, diligence and skill which ordinarily prudent persons would exercise in similar circumstances and like positions; the damages alleged to be suffered by Claimant were caused, in whole or in part, by Claimant's and/or the Trust's assumption of risk and negligent conduct, acts and/or omissions; and Claimant's claims are barred by the doctrines of laches and estoppel.

RELIEF REQUESTED

Claimant requested an award of \$5,965,026 in compensatory damages, plus, interest, attorneys' fees, costs and any other relief that the panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition Respondents requested that this matter be expunged from Randall S. Russell's permanent registration records maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

On or about November 20, 2003, the Director of Arbitration denied, pursuant to Rule 10315 of NASD Code of Arbitration Procedure ("the Code"), Respondents' Motion to Change Venue.

On or about April 22, 2004, the panel denied Respondents' Renewed Motion to Change Venue.

On or about October 7, 2004, the panel denied Respondents' Motion For Summary Judgment.

At the conclusion of the parties' cases in chief, the panel allowed both sides to file post-hearing briefs in regard to their requests for attorney's fees. All submissions were due on or before October 28, 2004. Pursuant to a stipulation of the parties, the panel extended the date for submission to November 1, 2004.

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

1. Claimant's claims, each and all, are hereby denied and dismissed with prejudice in their entirety;
2. Claimant, Susan P. Hollern, Trustee of the William H. Price, II Trust, is liable for and shall pay to Respondents, Wachovia Securities, LLC, and Randall S. Russell, attorneys' fees in the amount of One Hundred Ninety Three Thousand Five Hundred Twenty Six Dollars and Eighty Four Cents (\$193,526.84) pursuant to C.R.S. § 13-17-102; and
3. The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Randall S. Russell's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Randall S. Russell must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
4. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, are denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 600

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. In this matter, the member firm is Wachovia Securities, LLC.

Member surcharge = \$ 3,350

Pre-hearing process fee = \$ 750

Hearing process fee = \$ 5,500

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$ 1,200 = \$ 1,200

Pre-hearing conference: 02/27/2004 1 session

Seven (7) Hearing sessions with panel x \$ 1,200 = \$ 8,400

| | | |
|----------------|------------|------------|
| Hearing Dates: | 10/11/2004 | 2 sessions |
| | 10/12/2004 | 2 sessions |
| | 10/13/2004 | 2 sessions |
| | 10/14/2004 | 1 session |

Total Forum Fees = \$ 9,600

The arbitration panel has assessed \$ 9,600 of the forum fees to Susan P. Hollern, Trustee of the William H. Price, II Trust.

Fee Summary

Claimant, Susan P. Hollern, Trustee of the William H. Price, II Trust is liable for:

| | |
|-------------------------------------|-------------|
| Initial Filing Fee | = \$ 600 |
| <u>Forum Fees</u> | = \$ 9,600 |
| Total Fees | = \$ 10,200 |
| <u>Less payments</u> | = \$ 1,800 |
| Balance Due NASD Dispute Resolution | = \$ 8,400 |

Respondent, Wachovia Securities, LLC, is liable for:

| | |
|-------------------------------------|------------|
| <u>Member Fees</u> | = \$ 9,600 |
| Total Fees | = \$ 9,600 |
| <u>Less payments</u> | = \$ 9,100 |
| Balance Due NASD Dispute Resolution | = \$ 500 |

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

ARBITRATION PANEL

Suanne M. Parro, CPA - Public Arbitrator, Presiding Chair
Peter D. Bowes - Public Arbitrator
Richard M. Rieder- Non-Public Arbitrator

Concurring Arbitrators:

Suanne M. Parro, CPA
Public Arbitrator, Presiding Chair

Signature Date

Peter D. Bowes
Public Arbitrator

Signature Date

Richard M. Rieder
Non-Public Arbitrator

Signature Date

11/15/04
Date of Service (NASD use only)

Fee Summary

Claimant, Susan P. Hollern, Trustee of the William H. Price, II Trust is liable for:

| | |
|-------------------------------------|-------------|
| Initial Filing Fee | = \$ 600 |
| Forum Fees | = \$ 9,600 |
| Total Fees | = \$ 10,200 |
| Less payments | = \$ 1,800 |
| Balance Due NASD Dispute Resolution | = \$ 8,400 |

Respondent, Wachovia Securities, LLC, is liable for:


| | |
|-------------------------------------|------------|
| Member Fees | = \$ 9,600 |
| Total Fees | = \$ 9,600 |
| Less payments | = \$ 9,100 |
| Balance Due NASD Dispute Resolution | = \$ 500 |

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

ARBITRATION PANEL

Suanne M. Parro, CPA - Public Arbitrator, Presiding Chair
Peter D. Bowes - Public Arbitrator
Richard M. Rieder- Non-Public Arbitrator

Concurring Arbitrators:


Suanne M. Parro, CPA
Public Arbitrator, Presiding Chair

11/11/04
Signature Date

Peter D. Bowes
Public Arbitrator

Signature Date

Richard M. Rieder
Non-Public Arbitrator

Signature Date

11/15/04
Date of Service (NASD use only)

Fee Summary

Claimant, Susan P. Hollern, Trustee of the William H. Price, II Trust is liable for:

| | |
|-------------------------------------|-------------|
| Initial Filing Fee | |
| Forum Fees | = \$ 600 |
| Total Fees | = \$ 9,600 |
| Less payments | = \$ 10,200 |
| Balance Due NASD Dispute Resolution | = \$ 1,800 |
| | = \$ 8,400 |

Respondent, Wachovia Securities, LLC, is liable for:

| | |
|-------------------------------------|------------|
| Member Fees | |
| Total Fees | = \$ 9,600 |
| Less payments | = \$ 9,600 |
| Balance Due NASD Dispute Resolution | = \$ 9,100 |
| | = \$ 500 |

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

ARBITRATION PANEL

Suanne M. Parro, CPA - Public Arbitrator, Presiding Chair
Peter D. Bowes - Public Arbitrator
Richard M. Rieder - Non-Public Arbitrator

Concurring Arbitrators:

Suanne M. Parro, CPA
Public Arbitrator, Presiding Chair

Peter D. Bowes
Public Arbitrator

Richard M. Rieder
Non-Public Arbitrator

11/15/04
Date of Service (NASD use only)

Signature Date

Nov. 14.04
Signature Date

Signature Date

Fee Summary

Claimant, Susan P. Hollern, Trustee of the William H. Price, II Trust is liable for:

| | |
|-------------------------------------|-------------|
| Initial Filing Fee | = \$ 600 |
| <u>Forum Fees</u> | = \$ 9,600 |
| Total Fees | = \$ 10,200 |
| <u>Less payments</u> | = \$ 1,800 |
| Balance Due NASD Dispute Resolution | = \$ 8,400 |

Respondent, Wachovia Securities, LLC, is liable for:

| | |
|-------------------------------------|------------|
| <u>Member Fees</u> | = \$ 9,600 |
| Total Fees | = \$ 9,600 |
| <u>Less payments</u> | = \$ 9,100 |
| Balance Due NASD Dispute Resolution | = \$ 500 |

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

ARBITRATION PANEL

Suanne M. Parro, CPA - Public Arbitrator, Presiding Chair
Peter D. Bowes - Public Arbitrator
Richard M. Rieder - Non-Public Arbitrator

Concurring Arbitrators:

Suanne M. Parro, CPA
Public Arbitrator, Presiding Chair

Signature Date

Peter D. Bowes
Public Arbitrator

Signature Date



Richard M. Rieder
Non-Public Arbitrator

11/12/2004

Signature Date

11/15/04

Date of Service (NASD use only)