

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Betty Fowler

Case Number: 03-05377

Name of the Respondents
Wachovia Securities, LLC and
Edwin Troy Hawkins

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Public Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimant Betty Fowler, hereinafter referred to as "Claimant": Scott R. Baker, Esq. of Dallas, Texas.

Respondent Wachovia Securities, LLC, hereinafter referred to as "Wachovia": Michael A. Rodriquez, Esq. of The Ballard Law Firm, located in Houston, Texas.

Respondent Edwin Troy Hawkins, hereinafter referred to as "Hawkins": Did not appear.

CASE INFORMATION

Statement of Claim filed: June 2, 2003.

Claimant signed the Uniform Submission Agreement: March 12, 2003.

Statement of Answer filed by Respondent Wachovia on: October 31, 2003.

Respondent Wachovia signed the Uniform Submission Agreement: October 28, 2003.

Wachovia's Motion for More Definite Statement filed on: October 31, 2003.

Respondent Hawkins did not file a Statement of Answer or a signed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: negligence; breach of contract; unauthorized trading; breach of fiduciary duty; churning; failure to supervise (against Wachovia only); misrepresentation; failure to disclose material facts; and unsuitability. These causes of action related to Claimant's allegations that Respondents had repositioned the equities in her account

from blue chip investment stocks into telecom, technology and related stocks.

Unless specifically admitted in its Answer, Respondent Wachovia denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The alleged damages, if they exist, were the result of market forces, for which Wachovia is not responsible;
2. Wachovia is not liable to Claimant under the doctrines of ratification, waiver and estoppel;
3. Wachovia is not the producing or proximate cause of any damage to Claimant under any applicable state law, as alleged in the Statement of Claim;
4. Wachovia has not violated the federal or state securities statutes, and all their recommendations were undertaken in good faith, were consistent with Claimant's investment objectives and the accounts were properly supervised;
5. Any award of exemplary damages would violate the Texas and United States Constitutions; and
6. Claimant's request for attorneys' fees should not be granted because the claims lack merit or, alternatively, the causes of action alleged do not provide for an award of attorneys' fees.

RELIEF REQUESTED

Claimant requested the following damages in her Initial Pleading:

Compensatory Damages	\$140,000.00
Punitive Damages	\$500,000.00
Treble Damages	\$280,000.00
Interest	\$127,500.00
Attorneys' Fees	\$ 35,000.00
Other Costs	Unspecified
Other Monetary/Non-Monetary Relief if any:	Unspecified

At Hearing, Claimant requested the following damages:

Compensatory Damages	\$ 87,858.00
Punitive Damages	\$ 87,858.00
Treble Damages	\$175,716.00
Interest	Pre- and Post-Judgment at the rate of 10% per annum from March 1, 2000 until paid
Earned Commissions	\$ 7,825.00
Attorneys' Fees	\$ 25,000.00
Other Costs	NASD fees of \$1,575.00 plus actual costs of collection and enforcement
Other Monetary/Non-Monetary Relief if any:	As the Panel may justly determine.

Respondent Wachovia requested the allegations of the Statement of Claim be dismissed in all

respects, that Wachovia recover its attorneys' fees and costs, and for such further relief that the Panel deems just.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel denied Respondent Wachovia's Motion for More Definite Statement.

Late on August 17, 2004, the Claimant's counsel advised NASD Dispute Resolution that Fowler had settled her Claims against Respondent Wachovia, the hearing was not required, and that he would be presenting a Motion for Default against Respondent Hawkins. On August 18, 2004, the Panel appeared at the site of the hearing, but neither party arrived. Upon being notified by the staff of the settlement and the request for default, the Panel postponed the scheduled hearing at 10:30 AM with neither party present, and granted the Claimant's request that the hearing reconvene on August 19, 2004. On August 19, 2004, the Panel reconvened the hearing with Claimant present. Respondent Hawkins did not appear.

Upon review of the file and the representations made on behalf of the Claimant, the Panel determined that Respondent Hawkins was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

At hearing, Claimant presented a Motion for Award and Judgment. The Panel granted the Motion, in part, as set forth in this decision. In addition, the Claimant presented a Motion to Dismiss Respondent Wachovia with Prejudice pursuant to the settlement agreement. The Panel granted the Motion.

Respondent Hawkins did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

AWARD

After considering the pleadings, 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. Respondent Edwin Troy Hawkins is liable for and shall pay to the Claimant, Betty Fowler, the sum of \$87,858.00 as compensatory damages, plus pre- and post-judgment interest at the rate of 10% per annum accruing from March 1, 2000 until the award is paid in full;
2. Furthermore, Respondent Edwin Troy Hawkins is liable for and shall pay to the Claimant, Betty Fowler, the sum of \$7,825.00 as compensatory damages, representing the commissions wrongfully earned by Respondent Hawkins;
3. In addition, Respondent Edwin Troy Hawkins is liable for and shall pay to the Claimant, Betty Fowler, the sum of \$175,716.00 as Treble damages. In deciding to award treble damages, the Panel considered 15 U.S.C. §78, commonly known as §10b, Securities and Exchange Act of 1934, and *Mastrobuono v. Shearson*

Lehman Hutton, Inc., 514 U.S. 52 (1995), and determined that authority existed for an award of treble damages to the Claimant;

4. Respondent Edwin Troy Hawkins is also liable for and shall pay to the Claimant, Betty Fowler, the sum of \$25,000.00 as attorneys' fees. In deciding to award attorneys' fees, the Panel considered the arguments and pleadings presented by counsel and determined that authority existed for an award of attorneys' fees to the Claimant;
5. Respondent Edwin Troy Hawkins is also liable for and shall pay to the Claimant, Betty Fowler, the sum of \$1,575.00 for reimbursement of non-refundable filing fee and forum fee assessed against the Claimant;
6. The claims against Respondent Wachovia Securities, LLC are dismissed with prejudice subject to the completion of the terms of the settlement agreement;
7. Any additional costs or expenses shall be borne by the party incurring the cost or expense, including any additional attorneys' fees incurred in this arbitration; and,
8. Any and all relief not specifically addressed herein 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 and the following member fees are assessed:

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

August 18, 2004 adjournment by Claimant (Waived by Panel)	= \$ 1,200.00
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Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

August 18, 2004 adjournment by Claimant	= \$ 300.00
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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: May 25, 2004 1 session	
One (1) Hearing session @ \$1,200.00	= \$ 1,200.00
Hearing Date: August 19, 2004 1 session	
Total Forum Fees	= \$ 2,400.00

The Panel has assessed \$1,200.00 of the forum fees to Claimant Betty Fowler and has assessed \$1,200.00 of the forum fees to Respondent Edwin Troy Hawkins.

EEE SUMMARY

Claimant Betty Fowler is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 1,200.00
Three-Day Cancellation Fee	= \$ 300.00
Total Fees	= \$ 1,875.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 300.00

Respondent Wachovia Securities, LLC is solely liable for:

Member Fees	= \$ 7,000.00
Less payments	= \$ 3,000.00
Balance Due NASD Dispute Resolution	= \$ 4,000.00

Respondent Edwin Troy Hawkins is solely liable for:

Forum Fees	= \$ 1,200.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00


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

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ARBITRATION PANEL

Donald C. Hood, Esq. - Public Arbitrator, Presiding Chairperson
Dolores R. Rogers - Public Arbitrator
Raul Antonio Canez, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signatures



Donald C. Hood, Esq.
Public Arbitrator, Presiding Chairperson

9.10.04

Signature Date

Dolores R. Rogers
Public Arbitrator

Signature Date

Raul Antonio Canez, Esq.
Non-Public Arbitrator

Signature Date

9/13/04 Mm _____
Date of Service (For NASD Dispute Resolution office use only)

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