

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Wachovia Securities, LLC

v.

Case Number: 03-05495
Hearing Site: Omaha, Nebraska

Names of Respondents

CGF Securities, LLC

Brian J. Schuster

Rebecca L. Engle

and

Counter-Claimant

Brian J. Schuster

v.

Counter-Respondent

Wachovia Securities, LLC

and

Counter-Claimant

Rebecca L. Engle

v.

Counter-Respondent

Wachovia Securities, LLC

NATURE OF DISPUTE

Member Firm v. Member Firm and Associated Persons, Associated Person v. Member Firm, Associated Person v. Member Firm

REPRESENTATION OF PARTIES

Wachovia Securities, LLC ("**Claimant**" or "**Wachovia**") was represented by Ronald P. Kane, Esq. and Thomas Volz, Esq., Kane & Fischer, Ltd., Chicago, Illinois.

CGF Securities, LLC ("**CGF Securities**") was represented by Delmer C. Gowing, III, Esq., Delmer C. Gowing, III, P.A., Ocean Ridge, Florida.

Brian J. Schuster ("**Schuster**") and Rebecca L. Engle ("**Engle**") were represented by Martin M. Berliner, Esq., Berliner McDonald, Greenwood Village, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about July 25, 2003. The Submission Agreement of Claimant, Wachovia Securities, LLC, was signed on or about July 24, 2003. The Amended Statement of Claim was filed on or about October 9, 2003. Claimant's Reply to the Counterclaims of Respondents, Engle and Schuster, was filed on or about October 17, 2003.

The Statement of Answer was filed by Respondent, CGF Securities, LLC, on or about October 13, 2003. The Submission Agreement of Respondent, CGF Securities, LLC, was signed on or about October 2, 2003.

The Statement of Answer and Counterclaim was filed by Respondent, Brian J. Schuster, on or about September 25, 2003. The Submission Agreement of Respondent, Brian J. Schuster, was signed on or about September 16, 2003. Schuster's Amended Answer and Counterclaim was filed on or about October 10, 2003.

The Statement of Answer and Counterclaim was filed by Respondent, Rebecca L. Engle, on or about November 4, 2003. The Submission Agreement of Respondent, Rebecca L. Engle, was signed on or about September 16, 2003. Engle's Amended Answer and Counterclaim was filed on or about October 10, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: libel; slander; tortious interference; conspiracy to injure another in reputation, trade and business; unfair competition and unfair deceptive acts; and breach of promissory note. Claimant sought damages stemming from the solicitation and other activities of Respondents Engle and Schuster along with the repayment of amounts due pursuant to the terms of the promissory notes (Engle's Note 1) and (Schuster's Note 2).

Unless specifically admitted in its Answer, Respondent CGF Securities denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claims are barred by the doctrine of unclean hands; Claimant's claims are barred by the doctrine of unjust enrichment; and Claimant's claims are barred because it failed to mitigate its damages.

Unless specifically admitted in his Answer, Respondent Schuster denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claims are barred by the doctrine of unclean hands; Claimant's claims are barred by the doctrine of unjust enrichment; and Claimant's claims are barred because it failed to mitigate its damages.

Unless specifically admitted in her Answer, Respondent Engle denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claims are barred by the doctrine of unclean hands; Claimant's claims are barred by the doctrine of unjust enrichment; and Claimant's claims are barred because it failed to mitigate its damages.

In his Counterclaim, Schuster alleged that Wachovia intentionally took actions with the intention of preventing him from realizing his continued and future business which caused him to suffer a financial loss.

In her Counterclaim, Engle alleged that Wachovia intentionally took actions with the intention of preventing her from realizing her continued and future business which caused her to suffer a financial loss.

Unless specifically admitted in its Answer to the counterclaims, Wachovia Securities, LLC, denied the allegations made in the counterclaims and asserted affirmative defenses including the following: Respondents have no claim for fraudulent inducement; Respondents likewise have no claim for breach of contract; and Respondents have no claim for tortious interference.

RELIEF REQUESTED

Claimant requested an award of compensatory damages and punitive damages against all Respondents, in the amount of to be determined at the hearing on the merits, plus costs, including attorneys' fees and any other relief the arbitrators deemed just and equitable.

Claimant requested an award against Rebecca L. Engle in the amount of \$692,443.28, the principal balance due and owing under Note 1; plus \$1,561.70 in interest; and additional interest due and owing under Note 1 from September 13, 2002, to the date of payment, its costs and attorneys' fees.

Claimant requested an award against Brian J. Schuster in the amount of \$198,592.63, the principal balance due and owing under the Note 2; plus \$447.86 in interest; and additional interest due and owing under Note 2 from September 13, 2002, to the date of the payment, its costs and attorneys' fees.

CFG requested that the claims asserted against it be denied in their entirety and that it be awarded its costs, attorneys' fees and such other relief the arbitrators deemed just and equitable.

Respondent, Engle, requested that the claims asserted against her be denied in their entirety and that she be awarded her costs, attorneys' fees and such other relief the arbitrators deemed just and equitable.

Respondent, Schuster, requested that the claims asserted against him be denied in their entirety and that he be awarded his costs, attorneys' fees and such other relief the arbitrators deemed just and equitable.

In her counterclaim Engle requested an award of \$5,000,000.00 in compensatory damages, punitive damages, interest, costs, attorneys' fees and any other relief the arbitrators deemed just and equitable.

In his counterclaim Schuster requested an award of \$5,000,000.00 in compensatory damages, punitive damages, interest, costs, attorneys' fees and any other relief the arbitrators deemed just and equitable.

Wachovia requested that the claims asserted against them by Respondents Engle and Schuster be denied in their entirety, that it be awarded the full amount requested in its Amended Statement of Claim, and additional damages to be presented at hearing, including attorneys' fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

At the close of the Claimant's case, all Respondents move to have Counts 1 through 4 of claimant's Statement of Claim dismissed.

The panel ruled that Counts 2, 3 and 4 were dismissed with prejudice against all Respondents. As to Count 1, the panel determined that it could not state as a matter of law that at that time, the statements in the October 4, 2002, letter (Claimant's exhibit 19) were not libelous per se.

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 original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and 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) Respondent Brian J. Schuster is liable for and shall pay to Claimant, Wachovia Securities, LLC, the sum of \$198,592.63 in damages;
- 2) Respondent Brian J. Schuster is liable for and shall pay to Claimant, Wachovia Securities, LLC, the sum of \$447.86 in interest accrued during the term of Note 2;
- 3) Respondent Brian J. Schuster is liable for and shall pay to Claimant, Wachovia Securities, LLC, the sum of \$42,569.91 in interest on the balance due and owing under Note 2 from September 13, 2002, to June 2, 2005;
- 4) Respondent Rebecca L. Engle is liable for and shall pay to Claimant, Wachovia Securities, LLC, the sum of \$692,443.28 in damages;
- 5) Respondent Rebecca L. Engle is liable for and shall pay to Claimant, Wachovia Securities, LLC, the sum of \$1,561.70 in interest accrued during the term of Note 1;
- 6) Respondent Rebecca L. Engle is liable for and shall pay to Claimant, Wachovia Securities, LLC, the sum of \$148,443.57 in interest on the balance due and owing under Note 1 from September 13, 2002, to June 2, 2005;
- 7) Counter-Respondent Wachovia Securities, LLC is liable for and shall pay to Counter-Claimant Brian J. Schuster, the sum of \$181,208.00 in compensatory damages;
- 8) Counter-Respondent Wachovia Securities, LLC is liable for and shall pay to Counter-Claimant Rebecca L. Engle, the sum of \$631,837.00 in compensatory damages;
- 9) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 10) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$1,250.00
Engle's Counterclaim filing fee	= \$ 600.00
Schuster's Counterclaim filing fee	= \$ 600.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firms are Wachovia Securities, LLC and CGF Securities, LLC.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

Adjournment Fees

Adjournment requested during these proceedings:

July 26-July 30, 2004, requested by Brian J. Schuster (waived by the panel)	= \$1,200.00
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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 one Arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: January 5, 2005 1 session	
Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$2,400.00

Pre-hearing conferences: January 20, 2004 1 session
July 26, 2004 1 session

Twenty (20) Hearing sessions x \$1,200.00 = \$24,000.00

Hearing Dates: April 11, 2005 2 sessions
April 12, 2005 2 sessions
April 13, 2005 2 sessions
April 14, 2005 2 sessions
April 15, 2005 2 sessions
May 18, 2005 2 sessions
May 19, 2005 2 sessions
May 20, 2005 2 sessions
June 1, 2005 2 sessions
June 2, 2005 2 sessions

Total Forum Fees = \$26,850.00

The Arbitration Panel has assessed \$20,137.50 of the forum fees to Wachovia Securities, LLC.

The Arbitration Panel has assessed \$1,476.75 of the forum fees to Brian J. Schuster.

The Arbitration Panel has assessed \$5,235.75 of the forum fees to Rebecca L. Engle.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Brian J. Schuster, requested additional copies of pleadings, cost for \$15.00.

Fee Summary

Claimant, Wachovia Securities, LLC, is liable for:

Initial Filing Fee	= \$ 1,250.00
Member Fees	= \$ 8,000.00
Forum Fees	= \$20,137.50
Total Fees	= \$29,387.50
Less payments	= \$ 9,450.00
Balance Due NASD Dispute Resolution	= \$19,937.50

Claimant, CGF Securities, LLC, is liable for:

Member Fees	= \$ 8,000.00
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Total Fees	= \$ 8,000.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 1,000.00

Respondent, Brian J. Schuster, is liable for:

Counterclaim Filing Fee	= \$ 600.00
Administrative Costs	= \$ 15.00
Forum Fees	= \$ 1,476.75
Total Fees	= \$ 2,091.75
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,091.75

Respondent, Rebecca L. Engle, is liable for:

Counterclaim Filing Fee	= \$ 600.00
Forum Fees	= \$ 5,235.75
Total Fees	= \$ 5,835.75
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,835.75

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

ARBITRATION PANEL

Stephen E. Gehring, Esq. – Public Arbitrator, Presiding Chair
Thomas C. Lauritsen, J.D. - Public Arbitrator
Gerald J. Egermier - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Stephen E. Gehring, Esq.
Stephen E. Gehring, Esq.
Public Arbitrator, Presiding Chair

06/17/05
Signature Date

/s/ Thomas C. Lauritsen, J.D.
Thomas C. Lauritsen, J.D.
Public Arbitrator

06/17/05
Signature Date

/s/ Gerald J. Egermier
Gerald J. Egermier
Non-Public Arbitrator

06/20/05
Signature Date

06/17/05
Date of Service (For NASD office use only)

Total Fees	= \$ 8,000.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 1,000.00

Respondent, Brian J. Schuster, is liable for:

Counterclaim Filing Fee	= \$ 600.00
Administrative Costs	= \$ 15.00
Forum Fees	= \$ 1,476.70
Total Fees	= \$ 2,091.70
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,091.70

Respondent, Rebecca L. Engle, is liable for:

Counterclaim Filing Fee	= \$ 600.00
Forum Fees	= \$ 5,235.70
Total Fees	= \$ 5,835.70
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Total Fees	= \$ 2,091.75
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Respondent, Rebecca L. Engle, is liable for:

Counterclaim Filing Fee	= \$ 600.00
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