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

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In the Matter of the Arbitration Between:

Names of the Claimants

Roslyn Newberg  
Lillian Newberg

Case Number: 03-05770

Names of the Respondents

First Union Securities n/k/a  
Wachovia Securities, LLC  
Scott Eisler

Hearing Site: Boca Raton, Florida

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Nature of Dispute: Customer vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

For Roslyn Newberg and Lillian Newberg, hereinafter collectively referred to as "Claimants": Bruce A. Katzen, Esq., Kluger, Peretz, Kaplan & Berlin, P.A., Miami, Florida.

For First Union Securities n/k/a Wachovia Securities, LLC ("Wachovia") and Scott Eisler ("Eisler"), hereinafter collectively referred to as "Respondents": Ivette L. Arango, Esq., Fowler White Burnett P.A., Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: August 6, 2003.

Claimant Roslyn Newberg signed the Uniform Submission Agreement: July 21, 2003.

Claimant Lillian Newberg signed the Uniform Submission Agreement: July 21, 2003.

Statement of Answer filed by Respondents on or about: October 10, 2003.

Respondent Wachovia signed the Uniform Submission Agreement: October 10, 2003.

Respondent Eisler signed the Uniform Submission Agreement: October 8, 2003.

**CASE SUMMARY**

Claimants alleged the following causes of action: 1) breach of contract; 2) failure to supervise; 3) misrepresentation; 4) negligence; and 5) breach of fiduciary duty. The causes of action relate to investments in shares of mutual funds, including but not limited to, Van Kamper, FOWS Portfolios Internet and AIM Funds.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in the amount of \$100,000.00; 2) interest; 3) costs; 4) attorney's fees; and 5) punitive damages.

Respondents requested: 1) dismissal of claims asserted by Claimants; 2) costs; and 3) expungement of all reference to the above captioned arbitration from Respondent Eisler's registration records maintained by the NASD Central Registration Depository ("CRD").

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

On or about July 1, 2004, Claimants filed their notice of settlement.

On or about August 18, 2004, NASD Dispute Resolution closed its file.

On or about December 7, 2004, the parties jointly submitted an Agreed Motion to Reopen and Stipulation of Settlement wherein Claimants dismissed, with prejudice, all claims against Respondents, and requested expungement of all reference to the above captioned arbitration from Respondent Eisler's registration records maintained by the NASD CRD. On or about December 22, 2004, the Panel granted the Agreed Motion to Reopen.

On or about December 24, 2004, Arbitrator Eli Breger withdrew from the Panel. Thereafter, the parties agreed to proceed without appointment of a replacement arbitrator.

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 and the parties' request for the entry of a Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel recommends expungement of all references to the above-captioned arbitration proceeding from Respondent Eisler's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Eisler must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 225.00

**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, Respondent Wachovia is a member firm and a party.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

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Total Member Fees	= \$ 3,550.00
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**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

**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:

There were no three-day cancellation fees assessed during these proceedings.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 a single arbitrator @ \$450.00 per session	= \$ 450.00
Pre-hearing conference: December 22, 2003 1 session	

One (1) Pre-hearing session with Panel @ \$ 750.00 per session	= \$ 750.00
Pre-hearing conference: June 4, 2004 1 session	

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Total Fees	= \$ 1,200.00
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The Panel has assessed forum fees in the amount of \$600.00 to Claimants, jointly and severally.

The Panel has assessed forum fees in the amount of \$600.00 to Respondents, jointly and severally.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 600.00
<u>Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 975.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Wachovia is solely liable for:

<u>Member Fees</u>	<u>= \$ 3,550.00</u>
Total Fees	= \$ 3,550.00
<u>Less payments</u>	<u>= \$ 3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 600.00</u>
Total Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$ 600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

<i>David I. Stern</i>	-	<i>Public Arbitrator</i>
<i>Leonard L. Platt</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
David I. Stern  
Public Arbitrator

\_\_\_\_\_2/14/2005\_\_\_\_\_  
Signature Date


\_\_\_\_\_/s/\_\_\_\_\_  
Leonard L. Platt  
Non-Public Arbitrator

\_\_\_\_\_2/19/2005\_\_\_\_\_  
Signature Date

\_\_\_\_\_2/24/2005\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures



David I. Stern  
Public Arbitrator

2/14/2005  
Signature Date

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Leonard L. Platt  
Non-Public Arbitrator

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

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

**RECEIVED**  
FEB 16 2005  
FL ARBITRATION

NASD Dispute Resolution

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Concurring Arbitrators' Signatures

\_\_\_\_\_  
David I. Stern  
Public Arbitrator

\_\_\_\_\_  
Leonard L. Platt  
Non-Public Arbitrator

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

2-19-08  
\_\_\_\_\_  
Signature Date

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