

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

---

In the Matter of the Arbitration Between:

Jerry Mazzaella IRA, Theresa Mazzaella IRA, Theresa Mazzaella TOD Linda Mele, Jerry Mazzaella TOD Frank Mazzaella, (Claimants) v. First Union Securities, Inc. n/k/a Wachovia Securities, Inc. and Anthony Rogers, (Respondents)

Case Number: 03-05844

Hearing Site: New York, New York

---

Nature of the Dispute: Customers vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

Claimants, Jerry Mazzaella IRA ("J. Mazzaella IRA") and Theresa Mazzaella IRA ("T. Mazzaella IRA"), Theresa Mazzaella TOD Linda Mele ("TOD Mele") and Jerry Mazzaella TOD Frank Mazzaella ("TOD Mazzaella") hereinafter collectively referred to as "Claimants": Richard D. DeVita, Esq., DeVita & Associates, Hoboken, New Jersey.

Respondents, First Union Securities, Inc. n/k/a Wachovia Securities, Inc. ("Wachovia") and Anthony Rogers ("Rogers"), hereinafter collectively referred to as "Respondents": Brian A. Carlis, Esq., Stark & Stark, Lawrenceville, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on or about: July 15, 2003.

Claimants signed the Uniform Submission Agreement: July 11, 2003.

Statement of Answer and Motion to Dismiss filed by Respondents on or about: November 24, 2003.

Respondent (Wachovia) signed the Uniform Submission Agreement: November 30, 2003.

Respondent (Mr. Rogers) signed the Uniform Submission Agreement: November 17, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty/negligence; breach of NASD/NYSE Rules; breach of contract; unsuitability. The causes of action relate to the purchase and sale of mutual funds and a variable annuity.

Unless specifically admitted in its Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief may be granted; Claimants directed, approved and authorized each and every transaction in their accounts; Claimants ratified each and every transaction in

their accounts; Claimants, by their conduct, and under all the circumstances of this case, are estopped from asserting any claims with respect to the transactions made in their accounts; Claimants failed to mitigate any alleged damages; any alleged losses which may have occurred were the direct result of market conditions and other factors beyond the control of Respondents; all transactions recommended to and made for or on behalf of Claimants were suitable for and in accordance with their investment objectives and financial condition; there was no fiduciary duty owed to Claimants by Respondents as a matter of law, or under the circumstances of this case; any duties owed by Respondents to Claimants were fully and faithfully carried out; Claimants are barred from recovery because they directly instructed, authorized and consented to the transactions in question; there were no misrepresentations or omissions of material fact upon which Claimants relied to their detriment; Claimants' claims are barred, in whole or in part, by the applicable statutes of limitation; at all times relevant herein, Claimants knew and were aware of the risks associated with their investments and voluntarily chose to assume those risks. As such, Claimants are barred and estopped from recovery. The risks which Claimants assumed were the direct and proximate result of their losses, if any, to induce acceptance of Claimants' offer to purchase the investments, Claimants made various representations and warranties. Claimants are estopped from seeking recovery from Respondents on the basis of allegations that are inconsistent with these representations and warranties; the Doctrine of Laches bars Claimants' claims; Respondents are not liable to Claimants because they had no duty, contractual or otherwise, to disclose or inform Claimants of any facts other than those which were disclosed, nor did Respondents breach any duty owed to Claimants, if such a duty existed; the actions of Respondents are not the proximate cause of Claimants' alleged damages; upon information and belief, Claimants' claims are barred by the doctrine of *in pari delicto* and *unclean hands* in that Claimants, throughout all pertinent periods, made material misrepresentations in connection with the entering of the transactions described in the Statement of Claim that were mutual, simultaneous and relatively equal to or exceeded the misrepresentation alleged by Claimants; Claimants directed and/or authorized the execution of the transactions complained of. Accordingly, the claims are barred by the principles of waiver, estoppel and ratification; Respondents discharged their responsibilities in a professional and ethical manner and all of their actions were well within the parameters of accepted brokerage procedures and all exchange and governmental regulations; to the extent any losses or diminution in the value of Claimants' accounts has occurred, such losses were the result of unforeseen market fluctuations and were within the risks assumed; the damage allegedly suffered by Claimants has no causal relationship with any act committed by or legally attributable to Respondents; Respondents, at all times, discharged their responsibilities properly and in good faith in respect of all investments made by Claimants; all allegations as to Respondents set forth in the Statement of Claim are specifically denied; this claim is also barred by any applicable affirmative defenses as a matter of law or equity; and, to the extent the Statement of Claim seeks damages for any alleged violation of the Rules of the NASD or any other securities industry self-regulatory organization, the Statement of Claim fails to state a claim upon which relief may be granted. There is no private right of action for any alleged violation of the rules of the self-regulatory organization.

### **RELIEF REQUESTED**

**Claimants requested:**

Compensatory Damages	\$unspecified
Interest	\$unspecified
Attorneys' Fees	\$unspecified
Other Costs	\$unspecified
Other Monetary/Non-Monetary Relief, if any	\$unspecified

Respondents requested dismissal of the Statement of Claim in its entirety, together with an award of all reasonable costs and expenses, including reasonable attorneys' fees, costs of suit and such further relief as the panel deemed just and proper.

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

On February 25, 2005, the parties advised the NASD that they had reached a settlement. In particular, the parties agreed that all claims against all Respondents are dismissed with prejudice and Claimants and Respondents agreed to enter into a Stipulated Award, whereby the arbitrators would recommend the expungement of this matter from the CRD records of Mr. Rogers.

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

### **AWARD**

On February 25, 2005, the parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for entry of an Award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The parties have entered into a confidential settlement agreement.
2. The Claimants have dismissed all claims with prejudice against Respondents.
3. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Anthony Rogers' 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 Anthony Rogers must obtain confirmation from a court of competent jurisdiction before the

CRD will execute the expungement directive.

4. All parties shall bear their own costs and attorneys' fees.
5. All other requests for relief are hereby denied

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 250.00
--------------------------	-------------

**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. In this matter, the member firm First Union Securities, Inc. n/k/a Wachovia Securities, Inc. is a party.

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,200.00
Total Member Fees	= \$4,450.00

**Fee Summary**

1. Claimants are jointly and severally liable for:

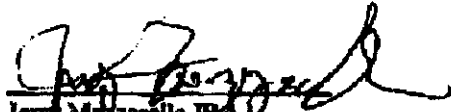
Initial Filing Fee	= \$ 250.00
Total Fees	= \$ 250.00
Less payments	= \$1,250.00
Refund Due Claimants	= \$1,000.00

2. Respondent Wachovia is solely liable for:

Member Fees	= \$4,450.00
Total Fees	= \$4,450.00
Less payments	= \$4,450.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are due and payable to NASD Dispute Resolution.


Parties' Signatures

  
Jerry Mazzarella IRA  
Claimant

4-1-05  
Signature Date

  
Theresa Mazzarella IRA  
Claimant

4-1-05  
Signature Date

  
Theresa Mazzarella TOD ~~IRA~~ Mele  
Claimant

4-1-05  
Signature Date

  
Jerry Mazzarella TOD / Frank Mazzarella  
Claimant

4-1-05  
Signature Date

\_\_\_\_\_  
Wachovia Securities, Inc.  
Respondent

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

\_\_\_\_\_  
Anthony Rogers  
Respondent

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

**Parties' Signatures**

\_\_\_\_\_  
Jerry Mazzarella IRA  
Claimant

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

\_\_\_\_\_  
Theresa Mazzarella IRA  
Claimant

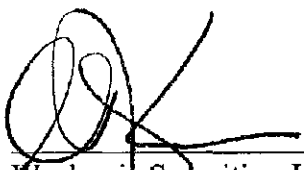
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Theresa Mazzarella TOD Linda Mele  
Claimant

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

\_\_\_\_\_  
Jerry Mazzarella TOD Frank Mazzarella  
Claimant

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

  
\_\_\_\_\_  
Wachovia Securities, Inc.  
Respondent

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

\_\_\_\_\_  
Anthony Rogers  
Respondent

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

**Parties' Signatures**

---

Jerry Mazzarella IRA  
Claimant

---

Signature Date

---

Theresa Mazzarella IRA  
Claimant

---

Signature Date

---

Theresa Mazzarella TOD Linda Mele  
Claimant

---

Signature Date

---

Jerry Mazzarella TOD Frank Mazzarella  
Claimant

---

Signature Date

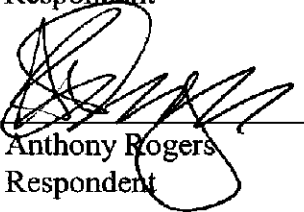
---

Wachovia Securities, Inc.  
Respondent

---

Signature Date

---



Anthony Rogers  
Respondent

---

3/9/05  
Signature Date

ARBITRATION PANEL

Frank Muller

Fern Sue Reidman, Esq.

David J. Pine, Esq.

Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures



Frank Muller

Public Arbitrator, Presiding Chair

4/19/05  
Signature Date

Fern Sue Reidman, Esq.  
Public Arbitrator

Signature Date

David J. Pine, Esq.  
Non-Public Arbitrator

Signature Date

April 20, 2005

Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 03-05844  
Award Page 6 of 6

---

**ARBITRATION PANEL**

Frank Muller	-	Public Arbitrator, Presiding Chair
Fern Sue Reidman, Esq.	-	Public Arbitrator
David J. Pine, Esq.	-	Non-Public Arbitrator

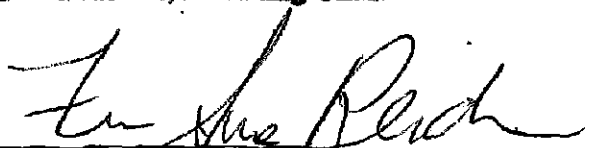
**Concurring Arbitrators' Signatures**

---

Frank Muller  
Public Arbitrator, Presiding Chair

---

Signature Date

  
Fern Sue Reidman, Esq.  
Public Arbitrator

  
Signature Date

---

David J. Pine, Esq.  
Non-Public Arbitrator

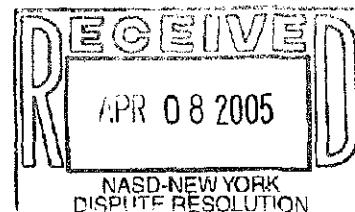
---

Signature Date

---

~~April 20, 2005~~  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 03-05844  
Award Page 6 of 6



**ARBITRATION PANEL**

Frank Muller	-	Public Arbitrator, Presiding Chair
Fern Sue Reidman, Esq.	-	Public Arbitrator
David J. Pine, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Frank Muller  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Fern Sue Reidman, Esq.  
Public Arbitrator

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

A handwritten signature in dark ink, appearing to read "David J. Pine", written over a horizontal line.

\_\_\_\_\_  
David J. Pine, Esq.  
Non-Public Arbitrator

4/6/05  
\_\_\_\_\_  
Signature Date

April 20, 2005  
Date of Service (For NASD office use only)