

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Stacey Cancilla

Case Number: 04-00287

Names of the Respondents  
Wachovia Securities, LLC,  
Jeffrey Clauss,  
Timothy Grable, Jr., and  
Brian McGrath

Hearing Site: Philadelphia, PA

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Nature of the Dispute: Customer vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Claimant, Stacey Cancilla, hereinafter referred to as "Claimant", pro se, did not appear at the hearing.

Respondents, Wachovia Securities, LLC ("Wachovia"), Jeffrey Clauss ("Clauss"), Timothy Grable, Jr. ("Grable"), and Brian McGrath ("McGrath"), hereinafter collectively referred to as "Respondents", were represented by Brian A. Carlis, Esq., Stark & Stark, P.C., Princeton, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on January 16, 2004.

Claimant signed the Uniform Submission Agreement on January 27, 2004.

Motion to Dismiss and Statement of Answer filed by Respondents on July 8, 2004.

Claimant filed a response to Respondents' Motion to Dismiss on August 13, 2004.

A representative of Respondent Wachovia signed the Uniform Submission Agreement on June 30, 2004.

Respondent Clauss signed the Uniform Submission Agreement on June 25, 2004.

Respondent Grable signed the Uniform Submission Agreement on June 22, 2004.

Respondent McGrath signed the Uniform Submission Agreement on July 1, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; fraud; breach of fiduciary duty; and, failure to supervise. The causes of action relate to the purchase and sale of technology stocks and a technology mutual fund.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses among others: failure to state a claim upon which relief may be granted; authorization; ratification; estoppel; failure to mitigate; assumption of the risk; laches; claim barred by any applicable affirmative defenses as a matter of law or equity; and, there is no private right of action for any alleged violation of the rules of the self-regulatory organization.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$8,500.00
Disgorgement	\$700.88
Interest	amount unspecified
Costs	amount unspecified
Attorneys' Fees	amount unspecified
Punitive Damages	amount unspecified

Respondents requested that the Statement of Claim be dismissed with prejudice; that they be awarded reasonable costs and expenses including attorneys' fees; and, that the individual Respondents regulatory records be expunged.

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

On April 13, 2005, Claimant dismissed her claims against Respondents Grable and McGrath with prejudice.

Upon review of the file, the undersigned arbitrator determined that Claimant received due notice of the hearing, and that arbitration of the matter would proceed without Claimant present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

At the hearing on the merits, Respondents Wachovia and Clauss moved the Arbitrator to dismiss the Statement of Claim.

### **AWARD**

After considering the motion to dismiss the matter presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed without prejudice;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below;

3. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondents Clauss', Grable's and McGrath'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, Respondents Clauss, Grable and McGrath must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and,
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### **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 = waived

#### **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 is a party.  
Member surcharge = \$325.00

#### **Forum Fees and Assessments**

The Arbitrator 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 a single arbitrator @ \$250.00 = \$250.00  
Pre-hearing conference: November 23, 2004 1 session

One (1) Hearing session @ \$250.00 = \$250.00  
Hearing Date: April 26, 2005 1 session

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Total Forum Fees = \$500.00

1. The Arbitrator has assessed \$375.00 of the forum fees to Claimant.
2. The Arbitrator has assessed jointly and severally \$125.00 of the forum fees to Respondents Wachovia and Clauss.

**Fee Summary**

1. Claimant is assessed and shall pay:

Forum Fees	= \$375.00
Total Fees	= \$375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$375.00

2. Respondent Wachovia is assessed and shall pay:

Member Fees	= \$325.00
Total Fees	= \$325.00
Less payments	= \$325.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Wachovia and Clauss are assessed and shall pay:

Forum Fees	= \$125.00
Total Fees	= \$125.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$125.00

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

**SOLE ARBITRATOR**

Louis H. Miron, Esq.

- Public Arbitrator, Presiding

**Arbitrator's Signature**

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Louis H. Miron, Esq.  
Public Arbitrator, Presiding

\_\_\_\_\_  
Date

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

**Fee Summary**

**1. Claimant is assessed and shall pay:**

Forum Fees	= \$375.00
Total Fees	= \$375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$375.00

**2. Respondent Wachovia is assessed and shall pay:**

Member Fees	= \$325.00
Total Fees	= \$325.00
Less payments	= \$325.00
Balance Due NASD Dispute Resolution	= \$ 0.00

**3. Respondents Wachovia and Cluett are assessed and shall pay:**

Forum Fees	= \$125.00
Total Fees	= \$125.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$125.00

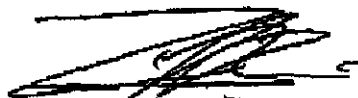
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**SOLE ARBITRATOR**

Louis H. Miron, Esq.

- Public Arbitrator, Presiding

**Arbitrator's Signature**



Louis H. Miron, Esq.  
Public Arbitrator, Presiding

5-4-05  
Date

May 5, 2005  
Date of Service (For NASD Dispute Resolution office use only)