

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

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In the Matter of the Arbitration Between:

Christina Hoffer-Simpson, Claimant v. Wachovia Securities, Inc., Respondent

Wachovia Securities, Inc., Counter-Claimant v. Christina Hoffer-Simpson, Counter-Respondent

Case Number: 04-00590

Hearing Site: Los Angeles, California

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Nature of the Dispute: Associated Person v. Member  
Member v. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant / Counter-Respondent

Christina Hoffer-Simpson ("Ms. Simpson" or  
"Claimant"):

David I. Lefkowitz, Esq.  
Neil Sunkin, Esq.  
Wilshire Palisades Law Group  
Santa Monica, California

For Respondent / Counter-Claimant

Wachovia Securities, Inc. ("Wachovia"  
or "Respondent"):

Laura L. Saadeh, Esq.  
Marie DiSante, Esq.  
Carlton, DiSante & Freudenberger,  
LLP  
Irvine, California

**CASE INFORMATION**

Statement of Claim filed: January 21, 2004

Claimant's Uniform Submission Agreement signed: January 20, 2004

Statement of Answer filed: April 12, 2004

Respondent's Uniform Submission Agreement signed: March 30, 2004

Statement of Counterclaim filed: April 12, 2004

Statement of Answer to Counterclaim filed: April 29, 2004

### **CASE SUMMARY**

Claimant alleged that Wachovia discriminated against her on the basis of pregnancy, pregnancy-related illness, and disability, and engaged in sexual harassment, all in violation of the California Government Code Sections 12900 et seq. Claimant also alleged intentional infliction of emotional distress, conversion, unjust enrichment, breach of contract, and fraud and deceit.

Wachovia denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim, asserted various affirmative defenses, and filed a Counterclaim for breach of a promissory note.

Claimant denied the allegations of wrongdoing set forth in Wachovia's Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested unspecified compensatory damages, unspecified punitive and exemplary damages, pre- and post-judgment interest, and costs, including attorney's fees.

Wachovia requested dismissal of Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

In its Counterclaim, Wachovia requested \$200,000.00 in compensatory damages, pre-judgment interest from January 7, 2002 to December 9, 2002 of \$9,206.40, pre- and post-judgment interest from December 10, 2002 until date of payment at the per diem rate of \$27.40, and costs.

Claimant requested dismissal of Wachovia's Counterclaim, and costs, including attorney's fees.

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

On March 4, 2004, Claimant and her counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On March 30, 2004, Wachovia's counsel signed a Waiver Agreement on its behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On March 25, 2005, Wachovia filed a Motion for Summary Judgment, or, in the Alternative, for Partial Summary Judgment ("Motion for Summary Judgment").

On April 11, 2005, Claimant filed a Motion to Strike Wachovia's Motion for Summary Judgment. Wachovia filed an opposition to the motion on April 28, 2005. The matter was set for counsel's respective arguments on the motion before a full panel by pre-hearing conference conducted on July 5, 2005. After due deliberation, the Panel denied the Motion to Strike.

Claimant filed an opposition to the Motion for Summary Judgment on June 17, 2005. Wachovia filed a reply to Claimant's opposition on June 24, 2005. The matter was set for counsel's respective arguments before a full panel by pre-hearing conference conducted on July 5, 2005. After due deliberation, the Panel granted Wachovia's Motion for Summary Judgment with respect to Claimant's claim for intentional infliction of emotional distress. The Panel denied the Motion for Summary Judgment with respect to all other claims alleged by Claimant. The Panel also denied the Motion for Summary Judgment with respect to Wachovia's Counterclaim.

On July 7, 2005, Claimant filed a Motion to Exclude from Evidence the notes of certain attorneys, to preclude any further copying or dissemination of the notes, to require all copies of said notes to be returned to Claimant, and to preclude the subject attorneys from testifying on the grounds of attorney-client privilege. Wachovia's opposition to the motion was filed on the same date, July 7, 2005. Further briefing was submitted by both Claimant and Wachovia on July 12, 2005. By agreement of the parties, the matter was set for counsel's respective arguments before the Chair by pre-hearing conference conducted on July 13, 2005. After due deliberation, the Chair denied the motion.

During the hearing, Wachovia made a Motion to Exclude Expert Witness Testimony from Mr. Levey, Mr. Kleiner, and Mr. Moock. The Panel granted the motion as to Mr. Levey, but denied it as to Mr. Kleiner and Mr. Moock.

During the hearing, Wachovia moved to Quash Third-Party Subpoenas directed to NASD. The Subpoenas sought records regarding certain litigation files as well as the Form U4s and Form U5s of Terry Chase and Ron Goldman. The Panel granted the motion as to the Forum U4s and U5s of Mr. Chase and Mr. Goldman, but denied the motion with respect to all other subpoenaed documents and information.

During the hearing, The Steiffel Law Firm moved to Quash a Third-Party Subpoena issued to it which sought records and documents related to its representation of Wachovia. The Panel granted the motion.

During the hearing, Wachovia moved to exclude testimony and documents relating to a mediation which took place between the parties. The Panel granted the motion.

During the hearing, Wachovia moved the panel to allow witness Debbie Barnett to testify telephonically. The motion was granted on the condition that Claimant could subpoena Ms. Barnett to the hearing if Claimant believed the same necessary to effectively cross-examine her.

Claimant did subpoena Ms. Barnett, but Ms. Barnett failed to appear in person. Claimant was given the option of either cross-examining Ms. Barnett telephonically, or continuing the hearing to have an opportunity to go to court to enforce the subpoena. Claimant chose to cross-examine Ms. Barnett telephonically.

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**

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Wachovia Securities, Inc. is liable to and shall pay Claimant Christina Hoffer-Simpson the sum of \$175,000.00 in compensatory damages on Claimant's causes of action for pregnancy discrimination, disability discrimination, harassment because of pregnancy, and breach of contract.
- 2) Respondent Wachovia Securities, Inc. is liable to and shall pay Claimant Christina Hoffer-Simpson the sum of \$29,480.24 as reimbursement for filing fees, expert witness fees, photocopies, court reporter fees, Federal Express expenses, attorney's service expenses, mediation fees, local travel and parking costs, and trial supplies.
- 3) Respondent Wachovia Securities, Inc. is liable to and shall pay Claimant Christina Hoffer-Simpson the sum of \$339,170.70 in attorney's fees, pursuant to the California Government Code, Section 12956(b).
- 4) The Counterclaim of Wachovia Securities, Inc. against Counter-Respondent Christina Hoffer-Simpson is denied in its entirety.
- 5) This Award shall bear interest at the rate of 6% per annum on any balance that remains unpaid thirty (30) days after receipt hereof, unless a motion to vacate has been filed with a court of competent jurisdiction. If this award is the subject of a motion to vacate that is subsequently denied, this award shall bear interest at the rate of 6% per annum on any balance that remains unpaid from date of the court's order denying said motion to vacate.
- 6) All other relief requested and not expressly granted is denied.

## **REASONS**

The arbitration claim submitted by Ms. Simpson against Wachovia consists of eight separate causes of action, as follows:

1. Pregnancy discrimination;
2. Disability discrimination;
3. Harassment because of sex pregnancy;
4. Intentional infliction of emotional distress;
5. Conversion;
6. Unjust enrichment;
7. Breach of contract;
8. Fraud and deceit.

The cause of action for intentional infliction of emotional distress was dismissed pursuant to Wachovia's motion for summary judgment and/or adjudication. Accordingly, the award and reasons therefore pertain only to the remaining seven causes of action and Wachovia's counterclaim for breach of the promissory note.

### **PREGNANCY DISCRIMINATION, DISABILITY DISCRIMINATION,**

#### **HARASSMENT BECAUSE OF SEX/PREGNANCY**

The Panel found in Claimant's favor on these causes of action based on the following factors:

A. Claimant was pregnant and disabled. The Panel found that not only was Ms. Simpson pregnant, but as a result of her pregnancy, suffered disabilities that entitled her to protection under both the federal and state law. Wachovia had knowledge of the pregnancy and disability and had an affirmative obligation to engage in a good faith interactive process, provide reasonable accommodations to enable her to perform the essential functions of her job, to protect her against harassment, to advise her of her rights under both the California Pregnancy Disability Leave Act ("PDL") and the federal Family Medical Leave Act ("FMLA") to conduct a full and fair investigation of any complaints of harassment based upon disability or pregnancy, and to take appropriate remedial action. The Panel found that Claimant proved by a preponderance of the evidence that Wachovia failed to fulfill its legal obligations with respect to the above. The Panel based this decision on the following:

1. Debbie Barnett harassed Ms. Simpson. While Ms. Barnett denied making any statements regarding the fact that Ms. Simpson was hormonal, or that she was losing her memory because of the pregnancy, and further denied teasing her on almost a daily basis, the Panel believed that the testimony of Ms. Simpson in this regard was more persuasive. The Panel took into consideration that Ms. Simpson's testimony regarding the insensitive and inappropriate remarks of Ms. Barnett were substantiated and confirmed by Mr. Graham and furthermore, were also supported by contemporaneous complaints made by Ms. Simpson and contained in her medical records. They were further confirmed by a contemporaneous

complaint that she made to Ms. Opheim, which was confirmed by Ms. Opheim in her testimony. The Panel found that the comments by Ms. Barnett, because of their frequency, were pervasive, and created a hostile work environment for Ms. Simpson that constituted actionable harassment.

2. Failure to Investigate. The Panel found the weight of the testimony established that Ms. Simpson did complain about the harassing activity and that Wachovia did not make any effort to properly investigate the claim. Although Ms. Simpson was aware of a complaint procedure by which she could have complained to HR, she also had distrust for the HR Department because she believed she was unfairly found to have wrongfully harassed Ms. Schlee and improperly put on probation by HR. Accordingly, she complained to her manager, Ron Goldman and asked that Ms. Barnett be replaced. We believed that Ms. Simpson's testimony that she complained to Mr. Goldman was established by a preponderance of the evidence because Mr. Graham confirmed the same, he testified that he told Mr. Goldman about the harassing behavior, and Mr. Goldman did not deny it, but merely said that he did not remember. Mr. Goldman did not investigate the complaint, did not report the complaint to HR which would have been appropriate under the circumstances, and he took no remedial action against Ms. Barnett.<sup>1</sup>

3. Failure to Accommodate: With knowledge that Ms. Simpson was both pregnant and disabled, Wachovia had a legal obligation to engage in a good faith interactive process, and to provide a reasonable accommodation to Ms. Simpson. The Panel believes that Wachovia failed to provide a reasonable accommodation in two respects. Namely, that they did not grant Ms. Simpson's request to have her commissions assigned to Mr. Graham, and they did not remove Ms. Barnett as Ms. Simpson's assistant. Furthermore, the Panel also found that Wachovia misinformed Ms. Simpson about her leave rights in that the Panel found that the evidence established that Amy Newman advised her that she only had 60 days of leave after which her job would not be guaranteed. The Panel found that Ms. Newman's negligent advice led directly to Ms. Simpson's resignation and combined with the failure to provide a reasonable accommodation constituted a constructive discharge.

The PDL requires that a pregnant employee has a right to return to the same job after her pregnancy leave has been completed. This was confirmed by Nancy Gibbons, on page 38, lines 4-9 of her deposition, wherein she testified that the employee is supposed to have the same job to come back to. Therefore, in order to accommodate Ms. Simpson while on pregnancy leave, Wachovia should have permitted her to transfer her commissions to Mr. Graham so that she would have a job to come back to upon completion of her pregnancy. Transferring the commissions to Mr. Graham would have enabled Ms. Simpson to come back to her job since her job depended on the preservation of her book of business. This arrangement would not have cost Wachovia one penny and it was a "no-brainer" for Wachovia to make such an accommodation. The fact that Wachovia never actually denied the request is

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<sup>1</sup> Although Mr. Goldman testified that he thought that Ms. Fernandez may have counseled Ms. Barnett, this was contradicted by Ms. Barnett, herself, who testified that she was never counseled or spoken to regarding any incident regarding the harassing remarks testified to by Ms. Simpson.

unavailing as a defense in that they did not respond in a timely manner, which, under the circumstances, is the same as a rejection. Wachovia had more than sufficient time to consider and decide the request and it appears as if the request simply "fell through the cracks." Mr. Goldman delegated the request to Julie Opheim who failed to follow up in a timely manner. The original reason for delaying a response to the request was that Wachovia did not know if 100% of the commissions could be assigned to Mr. Graham in light of the fact that Ms. Simpson was applying for temporary disability. So what? Even if it is a factor which would have caused her to be denied disability, that was Ms. Simpson's call. Also, after the disability was denied, there was absolutely no reason not to change the commission compensation structure immediately. Not only did Wachovia fail to provide reasonable accommodation, but failing to permit Ms. Simpson to transfer all her commissions to Graham also constituted a breach of its agreement with Ms. Simpson that was made by Mr. Goldman on behalf of Wachovia when Ms. Simpson, Mr. Kunze, and Mr. Graham were being recruited. At that time, the promise was made (which the Panel found to be part of the employment agreement) that Kunze, Graham and Simpson could divvy up their commissions any way they wanted. This was one of the selling points that Mr. Goldman made to them.<sup>2</sup>

Furthermore, Wachovia failed to accommodate Ms. Simpson, or remedy the hostile work environment, by failing to replace Ms. Barnett with another assistant. The Panel agrees that Wachovia was not required to replace Ms. Barnett with another full time assistant (since all Ms. Simpson was promised was that the original partnership would have a full time assistant, but not her individually) but they were obligated to replace her with another assistant. The testimony was that they offered to replace her with a part time assistance but that would be someone that Ms. Simpson would have to find, interview, and hire on her own. This was not reasonable considering Ms. Simpson's pregnancy and disability. Also, a reasonable accommodation would have been to transfer Ms. Barnett to another job or another location, or to switch her with another employee (e.g., Julie Standard) who could have performed the job of financial assistant.

The Panel believes that had Wachovia acceded to Ms. Simpson's request to have Graham receive all of her commissions, and replace Ms. Barnett with a more competent and personally compatible financial assistant, it would have fulfilled its duties to reasonably accommodate Ms. Simpson.<sup>3</sup>

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<sup>2</sup> Respondent argued (in its summary judgment motion) that the employment agreement was a fully integrated agreement and therefore this provision was barred by the parole evidence rule. This was rejected by the Panel at the time of the motion for summary judgment/adjudication on the grounds that the employment agreement was not a fully integrated agreement. This issue was fully briefed and ruled upon in the motion for summary judgment/adjudication.

<sup>3</sup> The Panel agreed with Respondent's position that it was not required to permit Ms. Simpson to work from home as a reasonable accommodation in light of Mr. Goldman's and Mr. Chase's testimony that there were regulatory and supervisory problems in permitting financial assistants to work from home, even though it may have been done on a rare occasion in the past, because there was insufficient testimony as to the circumstances of those prior instances and whether the circumstances were similar to Ms. Simpson's. Also, both Mr. Goldman and Ms. Opheim testified that Ms. Simpson never requested that she be able to work from home as an accommodation.

The Panel finds that Wachovia's negligent advice and failure to accommodate demonstrates a lack of appropriate training of its HR personnel and branch managers. Accordingly this Panel strongly recommends that Wachovia provide remedial training to the appropriate HR personnel and branch managers on California law and the FMLA as it applies to California employees regarding pregnancy leave, disability leave, and the obligation to provide a reasonable accommodation. Such training should also cover the importance of timely responding to requests for accommodations and posting the rights of pregnant and disabled employees under California law.

B. Constructive Discharge: Ms. Simpson resigned from her position on December 9, 2002. The Panel found that this resignation was not a voluntary resignation, but rather constituted a constructive discharge. The Panel based its finding on the grounds that Wachovia failed to remediate the harassment, failed to provide a reasonable accommodation, and that Ms. Simpson reasonably believed that if she did not resign, and was unable to return to work within 60 days (as she was misadvised by Amy Newman) then she would have had a negative "mark" on her U5, which could have adversely affected the rest of her career. The fact that there was testimony that Wachovia had other leave policies that would have protected Ms. Simpson, and that Wachovia never previously fired a financial advisor who did not timely return from a recognized leave of absence, is of no significance since these facts were never conveyed to Ms. Simpson. The leave policies of Wachovia as set forth in the Employee Manuals introduced into evidence at the Arbitration hearing were confusing and ambiguous. Ms. Simpson had the right to rely on the advice she received from HR and not try to figure out these policies for herself. Specifically, Exhibit 58 gives misleading advice that if an individual is not FMLA qualified they only get 30 days of unpaid personal leave and if your job is not available you have 30 days to post and if you don't get a job, your job is terminated. The Panel believes that Exhibit 58 was relied upon by Amy Newman in giving her erroneous advice in that the policy can be read as providing 30 days of leave and another 30 days to get a job, which totaled 60 days. Of course, this was incorrect advice in that Amy Newman apparently was unaware that under California law, you can get pregnancy disability leave for up to four months (regardless of whether you qualify for FMLA leave) and that said pregnancy disability leave will count toward your FMLA eligibility. In this case, since Ms. Simpson had only worked at Wachovia for ten months, on the surface, she was not eligible for FMLA and apparently Amy Newman believed that since she was not FMLA qualified she fell under the provisions of Exhibit 58 which Amy Newman interpreted to provide 60 days leave and then no guarantee. Unfortunately, Amy Newman was not aware that Ms. Simpson could take pregnancy leave for up to four months, then after two months of pregnancy leave, she would be eligible for FMLA. The failure of Ms. Newman (and Wachovia) to properly advise Ms. Simpson of her leave rights led directly to Ms. Simpson resigning from her position and therefore constituted a constructive discharge without cause. The fact that Ms. Simpson did not wait until after the 60 days was up to see what happens does not excuse or justify Wachovia's actions.



Not only is Ms. Simpson's version of what Amy Newman told her credible, but it is supported by Exhibit 38 which states that on November 29<sup>th</sup>, Ms. Simpson stated that HR said she would not have a job when she came back.

### **BREACH OF CONTRACT**

The Panel found that Wachovia breached its employment agreement with Ms. Simpson by failing to permit Ms. Simpson to assign 100% of the profits to Mr. Graham. However, all the damages that ensued from said breach of contract are covered under the damages awarded for the harassment, discrimination, and constructive discharge. Therefore, no additional damages were awarded for breach of contract.

### **CAUSE OF ACTION FOR FRAUD**

Claimant's cause of action for fraud was based on the allegation that Respondent failed to disclose to Claimant during the recruitment process that TROs and Preliminary Injunctions had been obtained in the Randall and Fuentes actions against other Washington Mutual ("WM") brokers who had left WM to join Wachovia. In addition, Claimant also alleged that Respondent misrepresented the terms of the global settlement related to the disputes between WM and Wachovia.<sup>4</sup>

The Panel denied Claimant's cause of action for fraud on the grounds that Claimant failed to prove the essential elements of fraud by a preponderance of the evidence.

The weight of the evidence adduced at the arbitration hearing indicated that Claimant knew about the WM litigation and had sufficient notice of the dispute to enable her to make further inquiry with respect to any questions she may have had. Mr. Landy testified that it was his understanding that Claimant had knowledge of the Fuentes lawsuit and Mr. Landy had notes indicating a conversation with Ms. Simpson (and others) wherein he requested information about various individuals who could be witnesses in the Fuentes litigation. Also, Mr. Landy testified that Ms. Simpson told him that Andy Gitipityapon was stressed out about the counter suit that Wachovia (as used herein First Union, the predecessor of Wachovia is also referred to as "Wachovia") had filed against him. Furthermore, Mr. Landy also testified that the possibility of a lawsuit being filed by WM was always a risk and he specifically asked Ms. Simpson what county she lived in to determine whether or not Los Angeles County would have jurisdiction over any lawsuit involving her. Furthermore, Mr. Landy testified that Ms. Simpson specifically provided Mr. Landy with information about Mr. McKusick, Mr. Marshall and Mr. Pink since they were either possible parties or witnesses in the Fuentes litigation. Mr. Landy testified that Ms. Simpson was fully advised of the risks of moving from WM to Wachovia.

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<sup>4</sup> Claimant had previously alleged as an additional instance of fraud that Respondent had promised that if Claimant joined Wachovia and formed a partnership with other brokers (namely Kunzee and Graham) that the commissions could be divided among the partnership in any way they saw fit and that they ultimately breached this promise by failing to permit Claimant to assign 100% of her commissions to Graham. However, there was no evidence to establish that Respondent did not intend to keep that promise at the time the promise was made.

In addition, Ms. Simpson admitted that she was aware that Fuentes was having problems transferring clients over to WM and she even spoke to Fuentes about this. Ms. Opheim stated that she was a friend of Ms. Simpson and discussed with her the fact that Andy Gitipityapon had testified against Fuentes and Ms. Opheim testified that Ms. Simpson and she specifically discussed the fact that WM had an injunction against Fuentes.

The above testimony of Mr. Landy was confirmed in large part by his contemporaneous notes and billing records, as well as contemporaneous conversations with Mr. Early who testified that Mr. Landy related the above to him prior to Ms. Simpson coming over to WM. Based upon the above, Ms. Simpson did not establish that she reasonably relied on any non-disclosure of the Randall or Fuentes TRO or preliminary injunction in leaving WM and joining Wachovia.

Moreover, and most importantly, the Panel further found that the issuance of the TROs and preliminary injunctions in the Randall and Fuentes cases did not proximately cause Ms. Simpson any damages. Mr. Early testified that Ms. Simpson was aware of the disputes with Fuentes and Randall and he specifically told her that the injunction does not apply to her and that they were just intimidation tactics. He said that Ms. Simpson didn't seem to be concerned and she agreed with him. He never told her to slow down her transfer efforts and merely to be careful so as not to give WM any excuse to do anything. He testified that she told him she didn't think WM would come after her unless she did something outrageous.

The testimony of Mr. Landy and Mr. Early were found by the Panel to be credible and supported by their contemporaneous notes and billing records.

Furthermore, the testimony of Mr. Early that the Fuentes and Randall TRO and injunction did not affect Ms. Simpson's efforts in transferring over clients was also confirmed by the testimony of Mr. Kunze and Ms. Schlee, both of whom testified unequivocally that the TRO and injunction in the Randall and Fuentes cases, and the letter from WM threatening potential action, had absolutely no effect on Ms. Simpson's efforts to transfer her book of business from WM to Wachovia. In fact, Ms. Schlee testified that they worked night and day immediately upon leaving WM to bring clients over to Wachovia and that Ms. Simpson never once told her that she was having problems bringing over clients or complaining about any restrictions. She further testified that it was the general understanding between herself, Mr. Kunze, Ms. Simpson and Mr. Graham that the injunction did not apply to them and they could continue to do what they had been doing. She was actually instructed by Ms. Simpson, Mr. Kunze and Mr. Goldman that the injunction didn't apply and to just continue doing what they had been doing. In fact, she testified that Ms. Simpson scoffed at the injunction, made no changes in her efforts to bring over the clients after the receipt of the injunction, and Ms. Simpson never told her that she couldn't bring over any clients from WM because of the injunction.

Mr. Landy's notes, dated 1/24/02 (Exhibit 515) indicate that Ms. Simpson herself stated that 85% of the customers that she really wanted were already transferred. On top of all this, the testimony of Ms. Simpson's partner, Ronald Kunze, also established that the failure to disclose the Fuentes and Randall TRO and injunction, and the receipt of the injunction in early

January, had absolutely no effect on the partnership's ability to transfer clients from WM to Wachovia, or specifically Ms. Simpson's efforts in that regard. The Panel found Mr. Kunze's testimony to be extremely credible. Mr. Kunze is currently being sued by Wachovia and he had no reason to provide favorable testimony on their behalf. Whatever "bad feelings" the termination of his partnership with Claimant initially may have engendered more than three years ago, were certainly outweighed by his current litigation with Wachovia. He specifically testified that Ms. Simpson was not concerned about the January 8<sup>th</sup> letter regarding the injunction and that Ms. Simpson said "Let them do what they can - no big deal." He further testified that he discussed the injunction with Ms. Simpson and they discussed the fact that the injunction would not affect their ability to bring over business. They both agreed that the injunction was no impediment and that it did not stop them from pursuing clients. He testified unequivocally that there was no change in Ms. Simpson's behavior in going after WM clients, that they both agreed that they were successful in bringing over WM clients, that Ms. Simpson was pleased with the number of clients she transferred and that Ms. Simpson never said that the litigation prevented her from bringing over clients. Mr. Kunze testified that the only impediment of bringing over more clients were the "dos and don'ts" originally given, which were totally separate and apart from any lawsuit. He stated that the main impediment was that they could only make one phone call and they couldn't actually solicit the client. He further said that WM was making great efforts to retain the clients and that Jason Paris had immediately sent letters to all his clients and Ms. Simpson told him that a similar letter was sent to all her clients. He also said that almost all the clients transferred within the first month. He said that both he and Ms. Simpson transferred over about the same amount of business, that Ms. Simpson never complained, and that almost everyone who transferred over did so within thirty days.

The Panel also rejected Ms. Simpson's contention that Mr. Goldman's misrepresentation about the terms of the settlement prevented her from transferring over her remaining WM clients. Claimant's main point was that she was advised by Mr. Goldman that she could no longer contact any of her WM clients and that she had to give up and return her client list and all client contact information. However, Mr. Goldman's advice was inconsistent with the plain terms of the settlement agreement that stated that she was only prohibited from contacting customers until July 1, 2002, which was a period of approximately ten days (or less) from the time the agreement was executed. In other words, the prohibitory period was ten days or less. It appears as if this was understood by Ms. Simpson, who in her own handwritten note of 7/1/02 (Exhibit 533) stated: "By 7/1/02 then can contact." Thus, Ms. Simpson's own handwritten note is consistent with the settlement agreement itself which required everyone to sign within ten days (which at the latest would be July 1) at which time all the former WM brokers were free to contact their old WM clients.

Finally, both Mr. Goldman and Mr. Kunze testified that by the time the settlement agreement was executed, everyone who could have been brought over from WM was already brought over in that it was already six months from the date Simpson came from WM to Wachovia. With respect to Mr. Goldman's testimony, he also said the average broker moves their book of business within 120 days, with a majority within 60 days, and Ms. Simpson never

complained about how our book of business was being transferred, and that any broker wants their book of business transferred as soon as possible. By that point in time, everyone who was going to transfer had already transferred, she hadn't targeted any of the remaining customers, she got the same percentage of customers and assets as Kunze, and pursuant to Exhibit 555, 85% of the customers that she wanted had already transferred.

Based upon all the above, the Panel found that neither the failure to disclose the Randall or Fuentes TROs and injunctions, nor the inaccurate advice given to her by Mr. Goldman regarding the terms of the settlement agreement, proximately caused her any damage whatsoever.<sup>5</sup>

### **UNJUST ENRICHMENT**

The Panel found for Respondents on the unjust enrichment charge because the Panel did not find that Wachovia was unjustly enriched by reassigning the book to Kunze in that Wachovia was still responsible for servicing the clients, and that it only received \$12,000 in additional compensation from Kunze. Furthermore, had Ms. Simpson continued to service the book, Wachovia would have probably received more commissions from the book than Kunze was able to generate. In addition, Wachovia was not unjustly enriched because it did pay Ms. Simpson a \$200,000 signing bonus, a significant portion of which was consideration for the expected transfer of the book. Finally, the cause of action for unjust enrichment is moot because any damages for unjust enrichment would be covered under the damages for harassment, discrimination and wrongful termination.

### **CONVERSION**

Wachovia did not "convert" the book. First of all, under California law, you cannot convert intangible property. (See, e.g., *Melchior v. New Line Productions, Inc.* [2003] 106 Cal.App.4th 779, 792 and *Dielsi v. Falk* [C.D. California 1996] 916 F. Supp. 985). For example, there can be no conversion for the goodwill of a business (*Adkins v. Laundry Co.* (1928) 92 Cal.App. 575; or a competitor's customer route (*Olschewski v. Hudson* (1927) 87 Cal.App. 282). Furthermore, Wachovia had an obligation to service the clients as Ms. Simpson was no longer able to do so. In addition, since Wachovia was lawfully in possession

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<sup>5</sup> Claimant made the argument that the damage occurred because had she known about the Fuentes and Randall injunctions, she would have never left WM. Even if that is true, her only claim would be for loss of earnings from January 1, 2002 through May 23, 2003. In that regard, had she never left WM, she would not have received the \$200,000 bonus that she received for joining WM and any diminution in her loss of earnings which occurred because she stayed at WM as opposed to going to Wachovia has been compensated under the other causes of action. Furthermore, the Panel did not find that Claimant proved by a preponderance of the evidence that she would not have left WM even had she known about the Fuentes and Randall injunctions, assuming that she did not. First of all, as stated previously, the Panel believed that she did have sufficient information to understand the risks of leaving WM and going to Wachovia. Secondly, the Panel could not find that she would not have left anyway in that WM had recently changed their commission structure so that any of the brokers would not be earning the same amount of money (which is one of the reasons why Wachovia was targeting the WM brokers), she received a \$200,000 bonus, and she was still able to transfer virtually all of the business that she had targeted.

of the "book of business", Simpson was required to demand the return of the "book" before any cause of action for conversion arises (*Flenbaugh v. Heinrich* [1948] 89 Cal.App.2d 214, 222). Finally, Wachovia's interest in having another broker service the account was not an intentional act of converting the property to its "own use" because it was already using the property. In any event, the cause of action for conversion is "moot" because any damages for conversion would be covered under damages for the harassment, discrimination and wrongful termination.

### **DAMAGES**

The Panel found for Claimant on the discrimination, disability, and harassment causes of action and awarded economic damages for the loss of her book of business, general damages for emotional distress, plus attorney's fees and costs. The Panel determined damages as follows:

#### **Loss of Earnings:**

The Panel did not award Claimant any damages for loss of earnings. First, the Panel believed that after the birth of her child the Claimant voluntarily withdrew from the labor market in order to care for her newborn child. The Panel further found that after she returned to work at CitiGroup she made essentially the same amount of money as she was making at Wachovia and did not award any damages for loss of earnings after she re-entered the labor market. The Claimant was also not awarded any loss of earnings from the date of her resignation until the birth of her child because had the reasonable accommodations requested by Claimant been implemented, she would not have earned anything during that period of time because 100% of the commissions would have gone to Mr. Graham. Since the Panel did not find that Wachovia had a duty to permit Ms. Simpson to work from home, or even if it did have such a duty, that Ms. Simpson could have performed the essential functions of her job from home (even with a new financial assistant whom Ms. Simpson could work with) the Panel found that there was no loss of earnings.

#### **The Value of Book of Business**

There was a great deal of conflicting testimony regarding the value of Ms. Simpson's book of business which she transferred from WM to Wachovia. The Panel did not award her any damages for the value of the book of business that was left at WM as the Panel did not believe that any acts or omissions of Wachovia prevented her from transferring any assets from WM to Wachovia. Accordingly, the only value of the book of business that the Panel determined was the value of the book of business that she brought to Wachovia and lost as a result of Wachovia's failure to accommodate, failure to remediate the harassment, failure to properly advise Ms. Simpson of her leave rights, and the constructive discharge.

Claimant's expert, Mr. Engel, valued the book of business at millions of dollars, essentially finding that it would generate the same or similar income that it had generated at WM and Wachovia. On the other hand, Respondent's expert, Ms. Xitco, valued the book of business at essentially zero, stating in sum and substance, that once Ms. Simpson started

working again at CitiGroup, she would not have had the "capacity" to service both her new CitiGroup clients, and the old Wachovia clients. The Panel rejected Ms. Xitco's analysis in this regard as unrealistic and unsupported by the facts. Ms. Simpson had substantial additional capacity to service the old Wachovia clients, as well as the new CitiGroup clients. The testimony was overwhelming that brokers often manage books of business of one hundred million dollars or more, and there are brokers who make a million dollars or more. Ms. Simpson was nowhere near that level. Ms. Simpson could have hired additional assistants, could have brought in a junior partner, and could have had additional personal capacity to service many more clients. On the other hand, Mr. Engel's evaluation was also flawed because he assumed that the book of business would continue to generate (for a substantial period of time) the same or similar income that it had while Ms. Simpson was at WM and Wachovia. The Panel found that Ms. Simpson's book of business was essentially "exhausted" by the time she left Wachovia in that it consisted of approximately 80% of annuities, and the bulk of commissions generated under annuities would not continue in subsequent years. Those clients had essentially "shot their wad" and there was little or no activity that would occur on those accounts in the next couple of years. Furthermore, the Panel also took into consideration the fact that the bulk of the clients who transferred over were annuity clients and not mutual fund clients. This is especially significant because some of the customers who had annuities also had mutual funds and the Panel was a bit perplexed as to why those customers transferred over their annuities but not their mutual funds. The Panel concluded that the customers made a conscious decision not to transfer all the mutual funds because they were satisfied with the mutual funds that were invested with WM. This also lends credence to the Panel's finding that the TROs and injunctions had nothing to do with the customers who did not transfer over accounts but there was just a certain percentage of customers who chose not to do so. In determining the value to place on the book of business, the Panel gave great weight to the testimony of Ray Valencia, Terry Chase, and Ron Goldman, all of whom testified that because Ms. Simpson's Wachovia book of business was comprised largely of annuities, it had basically been exhausted, and there were very little additional commissions that would be generated from said book of business. However, the most important testimony, and the testimony relied upon the most by the Panel on this issue was that of Ron Kunze. Mr. Kunze was Ms. Simpson's former partner and was very familiar with her book of business. He knew what it was worth. He agreed to pay \$150,000 for said book of business (Wachovia, one year earlier agreed to pay a \$200,000 bonus, in large part for said book of business) and the book of business diminished in the eight months after it had been transferred over because many of those customers purchased annuities in those eight months. Furthermore, in analyzing the deal that Mr. Kunze made, the Panel also considered that he didn't really pay \$150,000 for the book of business because he didn't pay all cash at the time of the transfer. In fact, he entered into a risk-free transaction where the most he would pay is \$150,000 based upon the income generated by the book of business. Therefore, he would only pay \$150,000 if the book of business generated sufficient income over time to pay that amount. In other words, that amount would be paid by deducting commissions earned on the book of business on

approximately 20% of Mr. Kunze's share. In the almost two years that Mr. Kunze worked the book of business, he only generated approximately \$60,000 in commissions.

The Panel's decision was also supported by the testimony of Mr. Graham who testified that he was offered the book of business, but turned it down. Mr. Goldman testified that Mr. Kunze was offered the business on the same terms and conditions of Mr. Graham. Therefore, Mr. Graham, who was Ms. Simpson's partner, and had a great relationship with all the clients, was not willing to pay \$150,000 for the book of business.

The above being said, the Panel also acknowledged that the book of business to Ms. Simpson was worth more than it was to Mr. Kunze, because she had the relationship with the clients. We believe that Ms. Simpson would have been able to generate more business from the book of business than Mr. Kunze did.

Taking all the above into consideration, the Panel found that any reduction from the value of the book of business from what Mr. Kunze paid because he did not pay all cash and was only going to pay it over time to the extent that the commissions generated from the book of business so permitted was offset by increasing the value to compensate for the fact that the book of business was worth more to Ms. Simpson than it was to Mr. Kunze, and therefore the Panel determined that based on all the factors the book of business that Ms. Simpson lost was worth \$150,000. Accordingly, the Panel awarded Ms. Simpson \$150,000 for the loss of her book of business.

#### Emotional Distress

The Panel believes that Ms. Simpson did suffer emotional distress as a result of her being harassed, her constructive discharge and the failure of Wachovia to properly accommodate her pregnancy and disability. Accordingly, the Panel awarded her damages for emotional distress in the sum of \$25,000. The Panel noted that Ms. Simpson had other stress factors related to emotional distress, most notably her marital problems and some of the impulsive personal decisions that she made with respect to her marital problems. The Panel believed that her marital problems and personal judgments that she made in connection therewith were largely unrelated to her termination from Wachovia. On the other hand, the Panel also recognized that financial stress played a part in her marital problems, as well as her emotional distress, and therefore we attempted to balance the damage for emotional distress between those caused by Wachovia's wrongful acts and those personal problems unrelated to the constructive discharge. In performing that balancing function, the Panel believes that a substantial majority of the emotional distress was unrelated to her discharge and would have occurred anyway. Therefore, the Panel found that emotional distress damages of \$25,000 appropriate under the circumstances.

#### Counterclaim On The Promissory Note

The Panel found against Respondent on this issue because under the terms of the Promissory Note ("Note") the loan is forgiven if the employee is terminated without cause under the conditions as referenced in the Disclosure Statement attached to the Note. (See Exhibit 516, Page S0047) We found that as a result of Respondent's failure to remediate the

harassment, failure to reasonably accommodate Ms. Simpson, and failure to properly advise her of her leave rights, Ms. Simpson's resignation on December 9, 2002 was a constructive termination without cause and under the terms of the Promissory Note the loan is forgiven.<sup>6</sup>

#### Punitive Damages

The Panel declined to award punitive damages because the Panel found that Wachovia's actions were primarily negligent in nature and did not constitute the fraudulent, oppressive, or malicious conduct necessary to justify punitive damages.

#### Attorney's Fees and Costs

Under applicable law, Claimant is entitled to her reasonable attorney's fees and costs for prevailing on her pregnancy discrimination, disability discrimination and harassment claims, as well as on the counter claim on the promissory note. However, Claimant is not entitled to recover the attorney's fees and costs on her fraud, breach of contract, conversion, or unjust enrichment causes of action. The Panel had requested that each side submit its request for attorney's fees and costs and break them down so that the Panel could properly apportion attorney's fees and costs. Although Claimant submitted a declaration setting forth total attorney time spent on this matter of 1,717.32 hours at the rate of \$395 per hour, for a total of \$678,341.40, plus an additional \$58,960.49 in costs, Claimant failed to apportion or allocate either the fees or costs among the various causes of action. In addition, based upon the Lodestar principle, Claimant also requested a multiplier of two times the actual fees because the case has been difficult, time consuming and labor intensive and also to compensate the attorneys for the delay and risk inherent in taking this type of case. However, the Panel declined to apply a multiplier but has determined that it will award attorney's fees based on the full hourly rate of \$395 per hour, for all the hours which the Panel believes were attributed to the discrimination, harassment and promissory note claims without any reduction in either the hourly rate or the number of hours the Panel believes was reasonably devoted to those causes of actions.<sup>7</sup>

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<sup>6</sup> Although the Disclosure Statement requires Ms. Simpson to sign a release and waiver as a condition of forgiving the loan, we find that the evidence indicated that Ms. Simpson was never offered that alternative, and never refused to do so. Accordingly, any such requirement has been waived by Wachovia and Wachovia is estopped from asserting it. Furthermore, the Panel finds such a provision unconscionable as applied to Ms. Simpson's discrimination claims under the facts of this case. Finally, the Panel also finds that the Note contains an implied covenant of good faith and fair dealing. The Note contained a provision which forgave a portion of the Note each month after one year of employment conditioned upon Ms. Simpson generating a minimum amount of production. Wachovia denied Ms. Simpson this benefit to which she was entitled in wrongfully terminating her by failing to accommodate her and remediate the harassment thereby preventing her from fulfilling the conditions for forgiveness of the loan. This constitutes a breach of the implied covenant of good faith and fair dealing and bars Wachovia from an recovery under the Note.

<sup>7</sup> Claimant's counsel submitted billings of more than 1700 hours of attorney time, which is extraordinary for a discrimination and wrongful termination case, even by today's standards. By contrast, Respondent's counsel submitted billings of less than 2/3 that amount. Under such circumstances and for the other reasons set forth above, the Panel did not believe that any Lodestar multiplier was justified.



Although Claimant's counsel states in his brief that he attempted to segregate the hours spent on the discrimination claims from the other claims, by placing a check mark next to those claims on the statement of services submitted as Exhibit A, no such check marks were found. Accordingly, the Panel reviewed the time incurred and determined a fair allocation would be 50% to the non-discriminatory claims (essentially the fraud claim) and 50% to the discrimination claims and promissory note. Accordingly, the Panel awarded Claimant the sum of \$339,170.70 in attorney's fees and \$29,480.24 in costs, which represents 50% of the amount requested.<sup>8</sup>

#### Forum Fees

The Panel assessed all Forum Fees against Respondent because Claimant was the prevailing party. Also, applicable law (*Armandariz v. Foundation Health Psychare Services*, 24 Cal.4th 83) requires the Employer to pay the special costs attributable to the arbitration process.<sup>9</sup>

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 250.00
Counterclaim filing fee	= \$1,000.00

#### Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Wachovia Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
<b>Total Member Fees</b>	<b>= \$5,000.00</b>

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<sup>8</sup> The Panel believes that there was no additional time spent in defending the Promissory Note since the defense on the Promissory Note was simply that by Wachovia's actions Ms. Simpson was prevented from continuing working and thereby taking advantage of the forgiveness provisions of the Note, as well as the fact that she was constructively terminated without cause. Accordingly, we found no additional time spent on the Note that was not also spent on the discrimination causes of action.

<sup>9</sup> The initial filing fee of \$200, and the photocopy charge of \$202 assessed against Claimant in the Award as an administrative cost of NASD, were taken into consideration in awarding costs to Claimant of \$29,480.24.

**Adjournment Fees**

The following adjournment fees are assessed:

March 21-25 and 28-31, 2005 adjournment requested by Wachovia = \$1,000.00

The Panel assessed the postponement fee of \$1,000.00 to Wachovia.

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Three (3) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$1,350.00

Pre-hearing conferences:	June 28, 2005	1 session
	July 7, 2005	1 session
	July 13, 2005	1 session

Seven (7) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$7,875.00

Pre-hearing conferences:	July 8, 2004	1 session
	August 11, 2004	1 session
	October 7, 2004	1 session
	March 1, 2005	1 session
	May 10, 2005	1 session
	May 23, 2005	1 session
	July 05, 2005	1 session

Twenty-seven (27) Hearing sessions @ \$1,125.00/session = \$30,375.00

Hearings:	July 18, 2005	2 sessions
	July 19, 2005	2 sessions
	July 20, 2005	2 sessions
	July 21, 2005	2 sessions
	July 22, 2005	2 sessions
	July 25, 2005	2 sessions
	July 26, 2005	2 sessions
	July 27, 2005	2 sessions
	July 28, 2005	3 sessions
	July 29, 2005	2 sessions
	September 12, 2005	2 sessions
	September 15, 2005	2 sessions
	September 16, 2005	2 sessions

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**Total Forum Fees = \$39,600.00**

The Panel assessed the entire balance of the forum fees, in the amount of \$39,600.00 to Wachovia Securities, Inc. pursuant to *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4<sup>th</sup> 83.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Christina Hoffer-Simpson requested 404 photocopies @ \$0.50:	= \$ 202.00
Wachovia Securities, Inc. requested 86 photocopies @ \$0.50:	= \$ 43.00

**Fee Summary**

1. Claimant / Counter-Respondent Christina Hoffer-Simpson is charged with the following fees and costs:

Initial Filing Fee pursuant to <i>Armendariz v. Foundation Health Psychcare Services, Inc.</i> 24 Cal.4 <sup>th</sup> 83	= \$ 200.00
<u>Administrative Costs</u>	= \$ 202.00
<u>Total Fees</u>	= \$ 402.00
<u>Less payments</u>	= \$ (200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 202.00</b>

2. Respondent / Counter-Claimant Wachovia Securities, Inc. is charged with the following fees and costs:

Balance due for Claimant's Filing Fee pursuant to <i>Armendariz</i>	= \$ 50.00
Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,000.00
Adjournment Fee	= \$ 1,000.00
Forum Fees	= \$39,600.00
<u>Administrative Costs</u>	= \$ 43.00
<u>Total Fees</u>	= \$46,693.00
<u>Less payments</u>	= \$ (8,375.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$38,318.00</b>

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

**ARBITRATION PANEL**

**Eric M. Epstein, Esq.**  
**Charles E. Rumbaugh, Esq.**  
**Ronald L. Cameron**

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**Public Arbitrator, Presiding Chair**  
**Public Arbitrator**  
**Non-Public Arbitrator**

**Concurring Arbitrators' Signatures**



**Eric M. Epstein, Esq.**  
**Chair, Public Arbitrator**

10/18/05  
Signature Date

**Ronald L. Cameron**  
**Non-Public Arbitrator**

Signature Date

**Concurring in Part and Dissenting in Part Arbitrator's Signature**

Although I concur in the Award, I dissent as to the reasons for the Award solely on the issue of the allocation of damages. I would have awarded Ms. Simpson the same sum of \$175,000 for compensatory damages, but I would have apportioned it by giving Ms. Simpson approximately five months loss of earnings (from the date of her constructive termination to the date that her child was born), plus a reduced value for the loss of her "book of business", for a total of \$175,000. I would not have awarded her anything for emotional distress.

**Charles E. Rumbaugh, Esq.**  
**Public Arbitrator**

Signature Date

October 18, 2005  
Date of Service

**ARBITRATION PANEL**

***Eric M. Epstein, Esq.***  
***Charles E. Rumbaugh, Esq.***  
***Ronald L. Cameron***

***Public Arbitrator, Presiding Chair***  
***Public Arbitrator***  
***Non-Public Arbitrator***

**Concurring Arbitrators' Signatures**

***Eric M. Epstein, Esq.***  
***Chair, Public Arbitrator***

  
***Ronald L. Cameron***  
***Non-Public Arbitrator***

**Signature Date**

***10/18/05***  
**Signature Date**

**Concurring in Part and Dissenting in Part Arbitrator's Signature**

Although I concur in the Award, I dissent as to the reasons for the Award solely on the issue of the allocation of damages. I would have awarded Ms. Simpson the same sum of \$175,000 for compensatory damages, but I would have apportioned it by giving Ms. Simpson approximately five months loss of earnings (from the date of her constructive termination to the date that her child was born), plus a reduced value for the loss of her "book of business", for a total of \$175,000. I would not have awarded her anything for emotional distress.

***Charles E. Rumbaugh, Esq.***  
***Public Arbitrator***

**Signature Date**

***October 18, 2005***  
**Date of Service**

**ARBITRATION PANEL**

***Eric M. Epstein, Esq.***

***Charles E. Rumbaugh, Esq.***

***Ronald L. Cameron***

-

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-

***Public Arbitrator, Presiding Chair***

***Public Arbitrator***

***Non-Public Arbitrator***

**Concurring Arbitrators' Signatures**

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**Eric M. Epstein, Esq.**  
**Chair, Public Arbitrator**

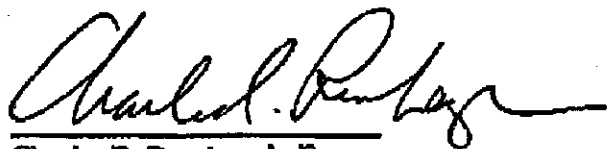
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**Signature Date**

\_\_\_\_\_  
**Ronald L. Cameron**  
**Non-Public Arbitrator**

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

**Concurring in Part and Dissenting in Part Arbitrator's Signature**

Although I concur in the Award, I dissent as to the reasons for the Award solely on the issue of the allocation of damages. I would have awarded Ms. Simpson the same sum of \$175,000 for compensatory damages, but I would have apportioned it by giving Ms. Simpson approximately five months loss of earnings (from the date of her constructive termination to the date that her child was born), plus a reduced value for the loss of her "book of business", for a total of \$175,000. I would not have awarded her anything for emotional distress.



\_\_\_\_\_  
**Charles E. Rumbaugh, Esq.**  
**Public Arbitrator**

10/18/05

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

October 18, 2005  
**Date of Service**