

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

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In the Matter of the Arbitration Between:

Jerry Weiner and Ann Weiner, Individually and Trustees for the benefit of the Weiner 1985 Family Trust, and Jerry Weiner, Individually and on behalf of the Jerry Weiner Ira Rollover Account, Claimants v. Wachovia Securities, LLC, as Successor to Everen Securities, Inc. and First Union Securities, Inc., Elliott Tad Friedman, and Kevin Foster Friedman, Respondents

Case Number: 04-00631

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customers v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimants:

Kenneth L. Kazan, Esq.  
Law Offices of Kenneth L. Kazan  
Encino, California

For Respondents:

Timothy N. Will, Esq.  
Albert & Will, LLP  
Torrance, California

**CASE INFORMATION**

Statement of Claim filed: January 29, 2004

Claimants' Joint Uniform Submission Agreement signed: Not Dated

Joint Statement of Answer filed by Respondents: April 15, 2004

Respondent Wachovia Securities, LLC, as Successor to Everen Securities, Inc. and First Union Securities, Inc.'s (hereinafter Wachovia Securities, LLC), Uniform Submission Agreement signed: April 14, 2004

Respondent Elliott Tad Friedman's Uniform Submission Agreement signed: March 19, 2004

Respondent Kevin Foster Friedman's Uniform Submission Agreement signed: March 17, 2004

### **CASE SUMMARY**

Claimants alleged unsuitability, breach of fiduciary duty, negligence, failure to supervise, and violation of Elder Abuse Act Civil Code Section 3345 and Welfare and Institutions Code Section 1561(F). Claimants' allegations involved transactions in various mutual funds and stocks.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$483,486.00, exemplary and punitive damages in the amount of \$1,208,715.00, unspecified interest, unspecified disgorgement, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and costs, including attorney's fees.

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

On April 29, 2004, Claimants and Claimants' 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waivers of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

### **STIPULATION**

Claimants and Respondents stipulate and agree to submit to the jurisdiction of NASD Dispute Resolution for purposes of the Stipulation to Enter Award to Expunge CRD Records of Respondents and this Stipulated Award.

Claimants and Respondents stipulate and agree that an NASD Award recommending the expungement of the CRD records of Respondents Elliott Tad Friedman and Kevin Foster Friedman shall be entered by NASD Dispute Resolution and that such Stipulated Award may be immediately signed by the NASD Dispute Resolution arbitrators.

Claimants and Respondents stipulate and agree that the Stipulated Award shall dismiss with prejudice all Respondents.

Claimants and Respondents stipulate and agree that all fees and costs assessed against either Claimants or Respondents by NASD Dispute Resolution shall be assessed against Claimants and Respondents equally, except that any such fees assessed as a result of the signing of the Stipulated Award shall be assessed against Respondents.

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 this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed with prejudice against all Respondents.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Elliott Tad Friedman'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, Respondent Elliott Tad Friedman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kevin Foster Friedman'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, Respondent Kevin Foster Friedman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The Parties shall bear their respective costs, including attorney's fees.
5. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure ("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	= \$ 500.00
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**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, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00
<b>Total Member Fees</b>	<b>= \$ 8,550.00</b>

**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:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: July 16, 2004 1 session	

<b>Total Forum Fees</b>	<b>= \$ 1,200.00</b>
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1. The Panel assessed \$600.00 of the forum fees jointly and severally to Claimants Jerry Weiner and Ann Weiner, Individually and Trustees for the benefit of the Weiner 1985 Family Trust, and Jerry Weiner, Individually and on behalf of the Jerry Weiner Ira Rollover Account.
2. The Panel assessed \$600.00 of the forum fees jointly and severally to Respondents Wachovia Securities, LLC, Elliott Tad Friedman, and Kevin Foster Friedman.

**Fee Summary**

1. Claimants Jerry Weiner and Ann Weiner, Individually and Trustees for the benefit of the Weiner 1985 Family Trust, and Jerry Weiner, Individually and on behalf of the Jerry Weiner Ira Rollover Account are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 600.00
<b>Total Fees</b>	<b>= \$ 1,100.00</b>
<u>Less payments</u>	<u>= \$ (1,700.00)</u>
<b>Refund due Claimants</b>	<b>= \$ (600.00)</b>
2. Respondent Wachovia Securities, LLC is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$ (8,550.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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3. Respondents Wachovia Securities, LLC, Elliott Tad Friedman, and Kevin Foster Friedman are charged jointly and severally with the following fees and costs:

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

Parties' Signatures

Jerry Weiner

Jerry Weiner

Individually and as Trustee for the benefit of  
The Weiner 1985 Family Trust and  
on behalf of the Jerry Weiner Ira Rollover Account

12/6/04

Signature Date

Ann Weiner

Ann Weiner

Individually and as Trustee for the benefit of  
The Weiner 1985 Family Trust

12-6-04

Signature Date

Wachovia Securities, LLC

By: \_\_\_\_\_

Its \_\_\_\_\_

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

\_\_\_\_\_  
Elliott Tad Friedman

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

\_\_\_\_\_  
Kevin Foster Friedman

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

Parties' Signatures

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Jerry Weiner  
Individually and as Trustee for the benefit of  
The Weiner 1985 Family Trust and  
on behalf of the Jerry Weiner Ira Rollover Account

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Signature Date

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Ann Weiner  
Individually and as Trustee for the benefit of  
The Weiner 1985 Family Trust

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Signature Date

Wachovia Securities, LLC

By:

Timothy S. O'Connell  
Its Vice President / Attorney

12/66/04  
Signature Date

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Elliott Tad Friedman

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Signature Date

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Kevin Foster Friedman

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Signature Date

Parties' Signatures

\_\_\_\_\_  
Jerry Weiner  
Individually and as Trustee for the benefit of  
The Weiner 1985 Family Trust and  
on behalf of the Jerry Weiner Ira Rollover Account

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

\_\_\_\_\_  
Ann Weiner  
Individually and as Trustee for the benefit of  
The Weiner 1985 Family Trust

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

Wachovia Securities, LLC

By: \_\_\_\_\_

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

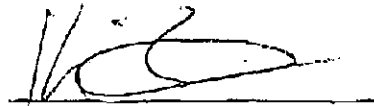
Its \_\_\_\_\_



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Elliott Tad Friedman

12-06-2004

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



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Kevin Foster Friedman

12-06-2004

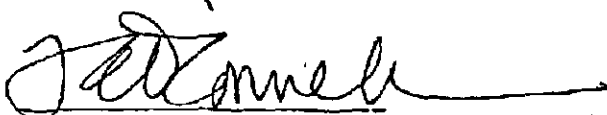
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ARBITRATION PANEL

Terry A. O'Connell	-	Public Arbitrator, Presiding Chair
George Hubner	-	Public Arbitrator
Robert Bruce MacDonald	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Terry A. O'Connell  
Chair, Public Arbitrator

2/4/05  
Signature Date

\_\_\_\_\_  
George Hubner  
Public Arbitrator

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

\_\_\_\_\_  
Robert Bruce MacDonald  
Non-Public Arbitrator

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

3/8/05  
Date of Service

**ARBITRATION PANEL**

<b>Terry A. O'Connell</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>George Hubner</b>	-	<b>Public Arbitrator</b>
<b>Robert Bruce MacDonald</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

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Terry A. O'Connell  
Chair, Public Arbitrator

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Signature Date



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George Hubner  
Public Arbitrator

12/10/04

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Signature Date

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Robert Bruce MacDonald  
Non-Public Arbitrator

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Signature Date

03/08/05

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Date of Service

**ARBITRATION PANEL**

<b>Terry A. O'Connell</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>George Hubner</b>	-	<b>Public Arbitrator</b>
<b>Robert Bruce MacDonald</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

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Terry A. O'Connell  
Chair, Public Arbitrator

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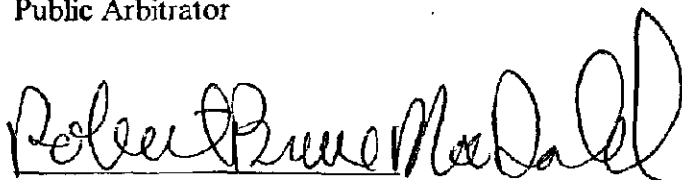
Signature Date

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George Hubner  
Public Arbitrator

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Signature Date



Robert Bruce MacDonald  
Non-Public Arbitrator

1-21-05

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Signature Date

03/08/05

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Date of Service

## Proof of Service

State of California, County of Los Angeles

I am employed in the county of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is:

NASD Dispute Resolution  
300 South Grand Avenue, Suite 900  
Los Angeles, California 90071

On March 8, 2005, I served the following documents described as:


Stipulated Award, Cover Letters, and Invoice Statement for Arbitration Case No. 04-00631 on the interested parties in this action by placing the true copies thereof enclosed in the sealed envelopes as follows:

Kenneth L. Kazan, Esq., Law Offices of Kenneth L. Kazan, 16133 Ventura Boulevard, Suite 700, Encino, CA 91436-2431; Fax Number: 818-501-5911

Timothy N. Will, Esq., Albert & Will, LLP, 2601 Airport Drive, Suite 345, Torrance, CA 90505; Fax Number: 310-257-9360

- ☒ I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
- ☐ By Personal Service, I caused such envelope to be delivered by hand to the individuals at the addressee(s) listed.
- ☐ By overnight courier, I caused the above-referenced documents to be delivered to an overnight courier service (Federal Express), for delivery to the above addressees.
- ☒ By facsimile machine, I caused the above-referenced documents to be transmitted to the above-named persons at the numbers above.
- ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☐ (FEDERAL) I declare that I am employed in the office of a member of the bar on this court at whose direction the service was made.

Executed this March 8, 2005, at Los Angeles, California.

  
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Rosemenie Ramos