

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

Charlotte H. Kovacs, Robin Howard,
Robert O. Koch, Jonell Y. Raborn,
and James R. Raborn

and

Case Number: 04-00705
Hearing Site: Houston, Texas

Names of Respondents

First Union Securities, Inc. n/k/a Wachovia Securities, Inc.,
Josephine Anne Otey,
Ian Hurwitz, and
Michael Steven Dudman

NATURE OF DISPUTE

Customers v. Member Firm and Associated Persons

REPRESENTATION OF PARTIES

Charlotte H. Kovacs, Robin Howard, Robert O. Koch, Jonell Y. Raborn, and James R. Raborn ("**Claimants**") were represented by William J. Hawkins, Esq., Spring, Texas.

First Union Securities, Inc. n/k/a Wachovia Securities, Inc. ("**Wachovia**"), Josephine Anne Otey ("**Otey**"), and Ian Hurwitz ("**Hurwitz**"), hereinafter collectively referred to as "Respondents," were represented by Jack D. Ballard, Esq., The Ballard Law Firm, Houston, Texas.

On or about November 18, 2004, Respondent Hurwitz was represented by Daniel R. Kirshbaum, Esq., Axelrod, Smith & Kirshbaum, Houston, Texas.

Michael Steven Dudman ("**Dudman**") did not make an appearance.

CASE INFORMATION

The Statement of Claim was filed on or about February 4, 2004. The Submission Agreement of Claimant, Charlotte H. Kovacs, was signed on or about January 9, 2004. The Submission Agreement of Claimant, Robin Howard, was signed on or about January 15, 2004. The Submission Agreement of Claimant, Robert O. Koch, was signed on or

about January 16, 2004. The Submission Agreement of Claimant, Jonell Y. Raborn, was signed on or about January 9, 2004. The Submission Agreement of Claimant, James R. Raborn, was signed on or about December 26, 2003. On or about September 10, 2004, Claimants filed a Motion for Leave to Amend the Statement of Claim.

The Joint Statement of Answer was filed by Respondents, First Union Securities, Inc. n/k/a Wachovia Securities, Inc., Josephine Anne Otey, and Ian Hurwitz, on or about April 15, 2004. The Submission Agreement of Respondent, First Union Securities, Inc. n/k/a Wachovia Securities, Inc., was signed on or about April 13, 2004. The Submission Agreement of Respondent, Josephine Anne Otey, was signed on or about April 13, 2004. The Submission Agreement of Respondent, Ian Hurwitz, was signed on or about April 18, 2004. On or about October 14, 2004, Respondents filed their Answer to the Amended Statement of Claim.

CASE SUMMARY

Claimants asserted the following causes of action: failure to supervise, breach of fiduciary duty, misrepresentations, omission of facts, and suitability. The causes of action relate to the recommendation and purchase of various unspecified securities. Claimants alleged that their portfolios were fully invested and over-concentrated in technology and telecommunication stocks, which were unsuitable for their investment objectives. Claimant Kovacs specifically alleged that stocks were sold and repurchased for higher prices within the same year and then sold again at lower prices. Kovacs alleged that this happened frequently and involved a broad spectrum of stocks such as Exxon, International Paper, Matsushita Elec. Ind., Amoy Properties, Ltd., Eastman Kodak and Sears. Also, Claimant Kovacs alleged that highly speculative stocks, such as Sunbeam, were purchased and sold at significant losses.

Unless specifically admitted in their Answer, Respondents, Wachovia, Otey and Hurwitz, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Respondents were not the cause of any damages to Claimants; the alleged damages were the result of market forces, for which Respondents are not responsible; Respondents are not liable to Claimants under the doctrines of ratification, waiver and estoppel; the alleged damages sustained were a result of Claimants' own negligence; Respondents were not the producing or proximate cause of any damages; there is no privity of contract between Claimants and Dudman; and Claimants' Statement of Claim against Dudman fails to state a claim upon which relief can be granted.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$3,685,000.00
Punitive/Exemplary Damages	Unspecified

Attorneys' Fees	Unspecified
Interest	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents, Wachovia, Otey and Hurwitz, requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Claimants' counsel filed a Motion to Dismiss Respondent Dudman. The Panel executed an Order dismissing Dudman.

On or about October 4, 2004, the Panel granted Claimants' Motion for Leave to Amend the Statement of Claim.

On or about March 31, 2005, Claimants' counsel submitted the Motion to Dismiss Claimants, Robin Howard, Robert O. Koch, Jonell T. Raborn and James R. Raborn, which had been signed by all parties. On or about April 6, 2005, the Panel executed the Order to dismiss with prejudice Claimants, Robin Howard, Robert O. Koch, Jonell T. Raborn and James R. Raborn.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

- 1.) Respondent, First Union Securities, Inc. n/k/a Wachovia Securities, Inc., is liable for and shall pay to Claimant, Charlotte H. Kovacs, the sum of \$350,000.00 in compensatory damages;
- 2.) Respondents, First Union Securities, Inc. n/k/a Wachovia Securities, Inc., and Josephine Anne Otey, are jointly and severally liable for and shall pay to Claimant, Charlotte H. Kovacs, the sum of \$70,000.00 in compensatory damages;
- 3.) Respondents, First Union Securities, Inc. n/k/a Wachovia Securities, Inc., and Ian Hurwitz, are jointly and severally liable for and shall pay to Claimant, Charlotte H. Kovacs, the sum of \$70,000.00 in compensatory

damages;

- 4.) Respondents, First Union Securities, Inc. n/k/a Wachovia Securities, Inc., Josephine Anne Otey and Ian Hurwitz, are jointly and severally liable for and shall pay to Claimant, Charlotte H. Kovacs, interest, on the above stated compensatory damage sums, at the rate of 4% per annum from and including the date the Award is served through and including the date the Award is paid in full pursuant to Texas statute;
- 5.) Respondent, First Union Securities, Inc. n/k/a Wachovia Securities, Inc., is liable for and shall pay to Claimant, Charlotte H. Kovacs, the sum of \$70,000.00 in attorneys' fees pursuant to Texas statute;
- 6.) Respondent, First Union Securities, Inc. n/k/a Wachovia Securities, Inc., is liable for and shall pay to Claimant, Charlotte H. Kovacs, the sum of \$30,000.00 in costs;
- 7.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 8.) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

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 = \$ 600.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is First Union Securities, Inc. n/k/a Wachovia Securities, Inc.

Member surcharge = \$ 2,800.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 5,000.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$	450.00
Pre-hearing conference: October 29, 2004 1 session		
Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$	2,400.00
Pre-hearing conferences: June 15, 2004 1 session		
March 17, 2005 1 session		
Eight (8) Hearing sessions x \$1,200.00	= \$	9,600.00
Hearing Dates: April 11, 2005 2 sessions		
April 12, 2005 2 sessions		
April 13, 2005 2 sessions		
April 14, 2005 2 sessions		
Total Forum Fees	= \$	12,450.00

The Arbitration Panel has assessed \$12,450.00 of the forum fees to First Union Securities, Inc. n/k/a Wachovia Securities, Inc.

Fee Summary

Claimants, Charlotte H. Kovacs, Robin Howard, Robert O. Koch, Jonell Y. Raborn, and James R. Raborn, are jointly and severally liable for:

Initial Filing Fee	= \$	600.00
Total Fees	= \$	600.00
Less payments	= \$	1,800.00
Refund Due to Claimants	= \$	1,200.00

Respondent, First Union Securities, Inc. n/k/a Wachovia Securities, Inc., is liable for:

Member Fees	= \$	8,550.00
Forum Fees	= \$	12,450.00
Total Fees	= \$	21,000.00
Less payments	= \$	8,550.00
Balance Due NASD Dispute Resolution	= \$	12,450.00

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

ARBITRATION PANEL

Sherry R. Wetsch, Esq. - Public Arbitrator, Presiding Chair
Paul E. Jones, Jr. - Public Arbitrator
Eli Bensky - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Sherry R. Wetsch, Esq.
Sherry R. Wetsch, Esq.
Public Arbitrator, Presiding Chair

April 15, 2005
Signature Date

/s/ Paul E. Jones, Jr.
Paul E. Jones, Jr.
Public Arbitrator

April 15, 2005
Signature Date

/s/ Eli Bensky
Eli Bensky
Non-Public Arbitrator

April 15, 2005
Signature Date

April 15, 2005
Date of Service (For NASD office use only)

ARBITRATION PANEL

Sherry R. Wetsch, Esq. - Public Arbitrator, Presiding Chair
Paul E. Jones, Jr. - Public Arbitrator
Eli Bensky - Non-Public Arbitrator

Concurring Arbitrators.



Sherry R. Wetsch, Esq.
Public Arbitrator, Presiding Chair

4-15-05

Signature Date

Paul E. Jones, Jr.
Public Arbitrator

Signature Date

Eli Bensky
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

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Paul E. Jones, Jr. - Public Arbitrator
Eli Bensky - Non-Public Arbitrator

Concurring Arbitrators:

Sherry R. Wetsch, Esq.
Public Arbitrator, Presiding Chair



Paul E. Jones, Jr.
Public Arbitrator

Eli Bensky
Non-Public Arbitrator

Signature Date

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Public Arbitrator

Signature Date



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