

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 04-01727

The Karl D'Amico Revocable Trust
Karl D'Amico
Mary D'Amico
Joseph J. D'Amico
Megan M. D'Amico

Names of the Respondents

Hearing Site: Charlotte, North Carolina

First Union Securities, Inc.
Wachovia Securities, LLC
Susan W. Johnson
William D. Mileham
First Union Investment Corporation

Nature of the Dispute: Customers vs. Members, Non-Member, and Associated Persons.

REPRESENTATION OF PARTIES

Claimants, The Karl D'Amico Revocable Trust, Karl D'Amico, Mary D'Amico, Joseph J. D'Amico, and Megan M. D'Amico, hereinafter collectively referred to as "Claimants", were represented by Donald M. Brown, Esq., Brown & Associates, PLLC, Charlotte, North Carolina.

Respondents, First Union Securities, Inc., ("First Union"), Wachovia Securities, LLC ("Wachovia"), Susan W. Johnson ("Johnson"), and William D. Mileham ("Mileham"), hereinafter collectively referred to as "Respondents", were represented by Edward T. Hinson, Jr., Esq., James, McElroy & Diehl, Charlotte, North Carolina.

Respondent First Union Investment Corporation ("FUIC") was represented by Edward T. Hinson, Jr., Esq., James, McElroy & Diehl, Charlotte, North Carolina and did not submit to arbitration.

CASE INFORMATION

Statement of Claim filed on July 30, 2004.

Karl D'Amico, Trustee, signed Claimant The Karl D'Amico Revocable Trust's Uniform Submission Agreement on March 22, 2004.

Claimant Karl D'Amico signed the Uniform Submission Agreement on March 22, 2004.

Claimant Mary D'Amico signed the Uniform Submission Agreement on March 22, 2004.

Claimant Joseph J. D'Amico signed the Uniform Submission Agreement on March 27, 2004.

Claimant Megan M. D'Amico signed the Uniform Submission Agreement on March 27, 2004.

Statement of Answer and Counterclaim filed by Respondents Wachovia, Mileham, and Johnson

on November 24, 2004.

Respondent Johnson signed the Uniform Submission Agreement on November 12, 2004.
A representative of Respondent Wachovia executed the Uniform Submission Agreement on November 12, 2004.

Respondent Mileham signed the Uniform Submission Agreement on December 14, 2004.

Respondent First Union did not file an Answer or a Uniform Submission Agreement with NASD Dispute Resolution.

Respondents Wachovia, Mileham, and Johnson's Dispositive Motion and Memorandum of Law in Support of Their Dispositive Motion for Dismissal was filed on May 12, 2005.

Claimants' Response to Respondents' Memorandum of Law was filed on June 15, 2005.

CASE SUMMARY

Claimants asserted the following causes of action, among others: breach of fiduciary duty, negligence, breach of contract, misrepresentation, negligence, and fraud. The causes of action relate to various securities.

Unless specifically admitted in their Answer, Respondents Wachovia, Mileham, and Johnson 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, waiver, laches, estoppel, ratification, statute of limitations, and contributory negligence.

Respondents Wachovia, Mileham, and Johnson asserted a cause of action for indemnification against Claimant Karl D'Amico as trustee of Claimant The Karl D'Amico Revocable Trust.

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$1,500,000.00
Punitive Damages	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents Wachovia, Mileham, and Johnson in their Statement of Answer and Counterclaim requested that the statement of claim be dismissed and that they be indemnified and granted any and all other relief the Panel deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

In Respondents' Memorandum of Law in Support of Their Dispositive Motion for Dismissal, they stated that Respondent Wachovia is the successor-in-interest to Respondent First Union.

Respondent First Union did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of

Arbitration Procedure (the "Code") and is bound by the determination of the Panel on all issues submitted.

Respondents' Motion to Dismiss was denied on July 27, 2005.

At the conclusion of the hearing, Respondents made a Motion to Dismiss the Claim based on the Statute of Limitations. The Panel allowed Claimants seven days to file a post-hearing Reply Brief on this issue. After receipt and review of the Reply Brief and Respondents' Motion, the Panel hereby denies said motion.

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.

AWARD

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

1. Respondents Wachovia and First Union are jointly and severally liable to and shall pay to Claimants compensatory damages of \$397,044.00, plus compounded interest at a rate of 3% per annum from July 30, 2004 until the date of payment of the Award in full;
2. Respondents' counterclaim is denied in its entirety;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; 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	= \$ 500.00
Counterclaim filing fee	= \$2,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Wachovia is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00
Total Member Fees	= \$8,550.00

Forum Fees and Assessments

The Panel 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 @ \$450.00	= \$ 450.00
Pre-hearing conference: May 3, 2005 1 session	

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$2,400.00
Pre-hearing conferences: February 24, 2005 1 session	
July 27, 2005 1 session	

One (1) Pre-hearing session with Panel @ \$1,200.00	waived by NASD
Pre-hearing conference: December 9, 2005	

Fifteen (15) Hearing sessions @ \$1,200.00	waived by NASD
Hearing Dates: August 2, 2005 2 sessions	
August 3, 2005 2 sessions	
August 4, 2005 2 sessions	
August 5, 2005 2 sessions	
December 13, 2005 2 sessions	
December 14, 2005 2 sessions	
December 15, 2005 2 sessions	
December 16, 2005 1 session	

Total Forum Fees	= \$2,850.00
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1. The Panel has assessed \$1,425.00 of the forum fees jointly and severally to Claimants.
3. The Panel has assessed \$1,425.00 of the forum fees jointly and severally to Respondents Wachovia and First Union.

FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$1,425.00
Total Fees	= \$1,925.00
Less payments	= \$1,700.00
Balance Due NASD Dispute Resolution	= \$ 225.00

2. Respondent Wachovia is assessed and shall pay the following fees:

Member Fees	= \$8,550.00
Total Fees	= \$8,550.00
Less payments	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Wachovia, Mileham, and Johnson are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$2,000.00
Total Fees	= \$2,000.00
Less payments	= \$2,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondents Wachovia and First Union are jointly and severally assessed and shall pay the following fees:

Forum Fees	= \$1,425.00
Total Fees	= \$1,425.00
Less payments	= \$1,200.00
Balance Due NASD Dispute Resolution	= \$ 225.00

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

ARBITRATION PANEL

M. Bruce Adelberg	-	Non-Public Arbitrator, Presiding Chairperson
William H. Malloy, Jr., Esq.	-	Public Arbitrator, Panelist
Sanford S. Finder, Esq.	-	Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

M. Bruce Adelberg

M. Bruce Adelberg;

Non-Public Arbitrator, Presiding Chairperson

1/30/06

Signature Date

William H. Mallo, Jr., Esq.
Public Arbitrator, Analyst

Signature Date

Sanford S. Finder, Esq.
Public Arbitrator, Analyst

Signature Date

February 1, 2006
Date of Service (For NASD Dispute Resolution office use only)

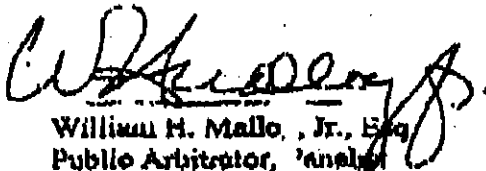
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Concurring Arbitrators' Signatures

Mr. Bruce Adelbe,
Non-Public Arbitrator, Presiding Chairperson

Signature Date


William H. Mallo, Jr., Esq.
Public Arbitrator, Panelist

January 31, 2006
Signature Date

Sanford S. Finder, Esq.
Public Arbitrator, Panelist

Signature Date

February 1, 2006
Date of Service (For NASD Dispute Resolution Office use only)

Concurring Arbitrators' Signatures

M. Bruce Adelberg
Non-Public Arbitrator, Presiding Chairperson

Signature Date

William H. Malloy, Jr., Esq.
Public Arbitrator, Panelist

Signature Date

Sanford S. Finner
Sanford S. Finner, Esq.
Public Arbitrator, Panelist

January 30, 2006
Signature Date

February 1, 2006
Date of Service (For NASD Dispute Resolution office use only)