

**Stipulated Award  
NASD Dispute Resolution**

In the Matter of the Arbitration Between:  
James S. McClellan, Jr., Claimant

Case Number: - 04-01920

v.

Wachovia Corporation and  
Wachovia Securities, LLC,  
Respondents

Hearing Site: St. Louis, Missouri

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**NATURE OF THE DISPUTE**

Associated Person v. Member Firm and Non-Member Firm

**REPRESENTATION OF PARTIES**

Claimant, James S. McClellan, Jr. ("McClellan"), hereinafter referred to as "Claimant": David B. Helms, Esq. of the law firm Lewis, Rice & Fingersh, L.C. located in St. Louis, Missouri.

Respondents, Wachovia Securities, LLC ("Wachovia Securities") and Wachovia Corporation, hereinafter collectively referred to as "Respondents": Diane C. Fisher, Esq. of the law firm Kane & Fisher, located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: March 18, 2004

Claimant McClellan signed the Uniform Submission Agreement: March 18, 2004

Statement of Answer and Counterclaim filed by Respondents, Wachovia Corporation and Wachovia Securities, LLC on or about: May 13, 2004

Respondent, Wachovia Corporation, signed the Uniform Submission Agreement: May 10, 2004

Respondent, Wachovia Securities, signed the Uniform Submission Agreement: May 11, 2004

Claimant filed an Answer to Respondents' Counterclaim: May 24, 2004

**CASE SUMMARY**

McClellan asserted various causes of actions, including fraudulent and negligent misrepresentations, tortious interference, breach of contract, promissory estoppel and constructive discharge. The causes of action relate to Promissory Notes he signed with Wachovia.

Unless specifically admitted in its Answer, Respondents Wachovia Securities and Wachovia Corporation, denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief can be granted; and McClellan's claims are contrary to fundamental contract principles. Wachovia alleged, among other things, that McClellan is liable for damages in the amount of \$369,687.19 (inclusive of interest through April 21, 2003), plus additional accrued and accruing interest and attorney's fees and costs in accordance with the terms of two Promissory Notes executed by McClellan on October 5, 2001 and October 11, 2002 (the "Notes"), which became due and owing to Wachovia upon

McClellan's termination from Wachovia on April 21, 2003.<sup>1</sup>

### **RELIEF REQUESTED**

Claimants requested for an unspecified amount in compensatory damages; punitive damages; pre-judgment interest; attorney's fees; costs, disbursements and expenses; for Claimant not to be held liable under the promissory notes; and for such other and further relief as shall be deemed just and equitable.

Respondents requested \$368,938.39 (total amount for Note 1 and Notes 2) in compensatory damages; interest for Note 1 from April 30, 2003 to the date of payment; interest in the amount of \$748.80 for Note 2; interest on the balance due and owing under Notes 2 from April 21, 2003 to the date of payment; cost; and for any other relief as the Panel deems just and equitable.

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

The parties resolved their dispute by entering into a Settlement Agreement. Pursuant to the terms of the Settlement Agreement, this Stipulated Award ("Award") shall be signed by the arbitrators, but no action will be taken by Wachovia to enforce the Award unless McClellan fails to comply with the payment terms of the Settlement Agreement. Should McClellan abide by the terms of the Settlement Agreement and pay Wachovia the monies agreed to, this Award shall be deemed to be satisfied. Pursuant to the Settlement Agreement, McClellan waived any right to an arbitration hearing.

The parties also agree 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 originals remain on file with NASD Dispute Resolution.

### **AWARD**

The parties have entered into a Settlement Agreement. As part of the Settlement Agreement, if the terms of the Settlement Agreement are not complied with, the parties have consented to the following award, and after considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) James S. McClellan shall pay to Wachovia Securities, LLC the sum of \$459,311.41, plus interest at the rate of 6% per annum from June 7, 2005 to the date of payment, less any principal amounts paid and amounts forgiven under the Settlement Agreement.
- 2.) James S. McClellan is liable for and shall pay to the NASD Dispute Resolution one-half of any forum fees and/or hearing cancellation fees assessed by the Panel.

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<sup>1</sup> One of the Notes signed by McClellan was made payable to First Union Corporation and the other Note was made payable to Wachovia Securities, Inc. On September 1, 2001, Wachovia Corporation merged with and into First Union Corporation. The surviving corporation changed its name to Wachovia Corporation. Wachovia Corporation subsequently assigned all its right, title and interest in and to McClellan's loans to Wachovia Securities, Inc., a wholly-owned subsidiary of Wachovia Corporation. On May 30, 2003, Wachovia Securities, Inc. converted to Wachovia Securities, LLC. (hereinafter, Wachovia Corporation, First Union Corporation, Wachovia Securities, LLC, Wachovia Securities, Inc. and First Union Securities, Inc. will be referred to interchangeable as "Wachovia").

- 3.) Wachovia Securities, LLC is liable for and shall pay to the NASD Dispute Resolution one-half of any forum fees and/or hearing cancellation fees assessed by the Panel.
- 4.) Except as otherwise specified herein, each party shall bear its own costs and attorney's fees.
- 5.) Any and all relief not specifically enumerated, including punitive damages is hereby denied.

### **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	= \$ 250.00
Counterclaim filing fee	= \$1,000.00

#### **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 person at the time of the events giving rise to the dispute. In this matter, member firm Wachovia Securities, LLC, is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

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

The 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:

Three (3) Pre-hearing sessions with a single arbitrator x \$450.00	= \$1,350.00
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Pre-hearing conferences:	October 15, 2004	1 session
	December 10, 2004	1 session
	March 29, 2005	1 session

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
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Pre-hearing conference:	August 9, 2004	1 session
Total Forum Fees		= \$2,475.00

The parties have agreed to pay forum fees as follows:

Claimant shall solely pay 50% of the total forum fees in the amount of \$1,237.50; and  
Respondents shall pay 50% of the total forum fees in the amount of \$1,237.50, jointly and severally.

**FEE SUMMARY**

Claimant, James S. McClellan, is hereby solely liable for:

Initial Filing Fee	= \$ 250.00
3-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$1,237.50
Total Fees	= \$1,637.50
Less payments	= \$1,250.00
Balance Due NASD Dispute Resolution	= \$ 387.50

Respondent, Wachovia Securities, LLC, is hereby solely liable for:

Member Fees	= \$5,000.00
Less payments	= \$5,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Wachovia Securities, LLC and Wachovia Corporation, are jointly and severally liable for:

Counter-Claim Filing Fee	= \$1,000.00
Forum Fees	= \$1,237.50
3-Day Cancellation Fee	= \$ 150.00
Total Fees	= \$2,387.50
Less payments	= \$2,125.00
Balance Due NASD Dispute Resolution	= \$ 262.50

All balances are due to NASD Dispute Resolution.

**ARBITRATION PANEL**

David B. Lacks, J.D.	-	Public Arbitrator, Presiding Chairperson
Marvin Klamen, Esq.	-	Public Arbitrator
Phillip L. Wisely	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ David B. Lacks, J.D.  
David B. Lacks, J.D.  
Public Arbitrator, Presiding Chair

10/4/05  
Signature Date

/s/ Marvin Klamen, Esq.  
Marvin Klamen, Esq.  
Public Arbitrator

10/4/05  
Signature Date

/s/ Phillip L. Wisely  
Phillip L. Wisely  
Non-Public Arbitrator

10/4/05  
Signature Date

NASD Dispute Resolution

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10/5/05

Date of Service (For NASD office use only)

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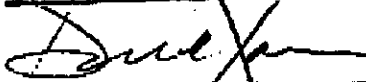
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