

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

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In the Matter of the Arbitration Between:

Les O. Starnes, Sally Starnes, and the Starnes Family Trust, Claimants v. Wachovia Securities, LLC f/k/a Wachovia Securities, Inc. f/k/a First Union Securities, Inc., Wachovia Securities Financial Network, LLC, George Herve Blais, Jr., George H. Blais, III, David Albert Boyer, and James E. Thomas, Jr., Respondents

Case Number: 04-01932

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

Kristin M. Cano, Esq.  
Law Offices of Kristin M. Cano  
Newport Beach, California

For Respondents Wachovia Securities, LLC f/k/a  
Wachovia Securities, Inc. f/k/a First Union Securities, Inc.  
("Wachovia Securities, LLC"), Wachovia Securities  
Financial Network, LLC, George Herve Blais, Jr., George  
H. Blais, III, and David Albert Boyer:

G. Thomas Fleming, III, Esq.  
Robert J. Girard, II, Esq.  
Jones, Bell, Abbott, Fleming &  
Fitzgerald L.L.P.  
Los Angeles, California

For Respondent James E. Thomas, Jr.:

Jeffrey M. Smith, Esq.  
Greenberg Traurig, LLP  
Atlanta, Georgia

**CASE INFORMATION**

Statement of Claim filed: March 19, 2004

Claimants Les O. Starnes and the Starnes Family Trust's Joint Uniform Submission Agreement  
signed: February 23, 2004

Claimant Sally Starnes' Uniform Submission Agreement signed: February 24, 2004

Joint Statement of Answer filed by Respondents Wachovia Securities, LLC, George Herve Blais, Jr., George H. Blais, III, and David Albert Boyer: July 12, 2004

Respondent Wachovia Securities, LLC's Uniform Submission Agreement signed: August 31, 2004

Respondent George Herve Blais, Jr.'s Uniform Submission Agreement signed: August 25, 2004

Respondent George H. Blais, III's Uniform Submission Agreement signed: August 25, 2004

Respondent David Albert Boyer's Uniform Submission Agreement signed: August 25, 2004

### **CASE SUMMARY**

Claimants alleged violation of section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)-5, fraud and deceit, intentional infliction of emotional distress, negligent infliction of emotional distress, intentional misrepresentations, negligent misrepresentations, negligence, breach of fiduciary duty, breach of contract, and violations of California Corporations Code, Sections 25400 and 25401. Claimants' claims involved transactions in various securities.

Respondents Wachovia Securities, LLC, George Herve Blais, Jr., George H. Blais, III, and David Albert Boyer denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and set forth various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested \$372,000.00 in compensatory damages, rescission interest at the rate of 10% per annum, \$12,593.78 in disgorgement penalty, \$21,898.56 in margin interest, and make whole damages according to proof.

Respondents Wachovia Securities, LLC, George Herve Blais, Jr., George H. Blais, III, and David Albert Boyer requested dismissal of the Claimants' Statement of Claim in its entirety, and costs, including forum fees. Respondents George Herve Blais, Jr., George H. Blais, III, and David Albert Boyer also requested expungement from their respective records on file with the Central Registration Depository.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondents Wachovia Securities Financial Network, LLC and James E. Thomas, Jr. did not file with NASD Dispute Resolution properly executed submission agreements, but are required to submit to arbitration pursuant to the Code of Arbitration Procedure, and are bound by the determination of the Panel on all issues submitted.

On June 7, 2004, Claimants withdrew their Statement of Claim as to Respondent James E. Thomas, Jr. Claimants stated that James Thomas, Jr. was inadvertently added to the Statement of Claim and that Mr. Thomas had absolutely nothing to do with the matters set forth in the Statement of Claim.

On October 28, 2004, Claimants dismissed Respondent Wachovia Securities Financial Network, LLC with prejudice.

On October 29, 2004, Claimants dismissed Respondent David Albert Boyer with prejudice.

On May 24, 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 waiver 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.

On August 22, 2005, the Panel convened the evidentiary hearing. Respondents Wachovia Securities, LLC, George Herve Blais, Jr., and George H. Blais, III appeared at the hearing. Claimants did not appear. At the hearing, the Panel contacted counsel for Claimants by telephone. Claimants' counsel informed the panel that Claimants would not enter an appearance at the hearing. Claimants' counsel also informed the Panel that Claimants had entered into a settlement with Respondent Wachovia Securities, LLC, and that Claimants would not oppose an award of expungement for Respondents George Herve Blais, Jr. and George H. Blais, III.

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) On August 18, 2005, Claimants entered into a settlement with Respondent Wachovia Securities, LLC.
- 2) Claimants' claims are dismissed with prejudice.
- 3) a) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent George Herve Blais, Jr.'s registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent George Herve Blais, Jr. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.  
  
b) Rule 2130 does not apply in this arbitration, and the Panel finds that expungement is appropriate pursuant to the standards applicable prior to Rule 2130. However, if Rule 2130 does apply, the Panel has made the following affirmative finding of fact: The claim, allegation, or information is false.
- 4) a) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent George H. Blais, III's registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 04-16, Respondent George H. Blais, III must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.  
  
b) Rule 2130 does not apply in this arbitration, and the Panel finds that expungement is appropriate pursuant to the standards applicable prior to Rule 2130. However, if Rule 2130 does apply, the Panel has made the following affirmative finding of fact: The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.
- 5) a) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent David Albert Boyer's registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 04-16, Respondent David Albert Boyer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.  
  
b) Rule 2130 does not apply in this arbitration, and the Panel finds that expungement is

appropriate pursuant to the standards applicable prior to Rule 2130. However, if Rule 2130 does apply, the Panel has made the following affirmative finding of fact: The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

- 6) a) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent James E. Thomas, Jr.'s registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 04-16, Respondent James E. Thomas, Jr. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- b) Rule 2130 does not apply in this arbitration, and the Panel finds that expungement is appropriate pursuant to the standards applicable prior to Rule 2130. However, if Rule 2130 does apply, the Panel has made the following affirmative finding of fact: The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.
- 7) The parties shall bear their respective costs, including attorney's fees.
- 8) All other relief requested and not expressly granted is denied.

### **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	= \$ 300.00
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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	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,750.00
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

Accordingly, the member firm Wachovia Securities Financial Network, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,750.00
<b>Total Member Fees</b>	<b>= \$ 5,200.00</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 Panel. The following fees are assessed:

1 Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference:      October 19, 2004      1 session	
2 Hearing sessions @ \$1,125.00/session	= \$ 2,250.00
Hearings:      August 22, 2005      2 sessions	
<b>Total Forum Fees</b>	<b>= \$ 3,375.00</b>

1. The Panel assessed \$562.50 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$562.50 of the forum fees to Respondent Wachovia Securities, LLC.
3. The Panel assessed \$2,250.00 of the forum fees jointly and severally to Respondents Wachovia Securities, LLC, George Herve Blais, Jr., and George H. Blais, III.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$(1,425.00)
<b>Refund Due Claimants</b>	<b>= \$( 562.50)</b>
2. Respondent Wachovia Securities, LLC is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 5,762.50
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 562.50</b>
3. Respondent Wachovia Securities Financial Network, LLC is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
4. Respondents Wachovia Securities, LLC, George Herve Blais, Jr., and George H. Blais, III are charged jointly and severally with the following fees and costs:

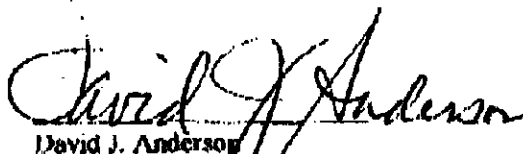
Forum Fees	= \$ 2,250.00
Less payments	= \$( 0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,250.00</b>

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**

David J. Anderson	-	Public Arbitrator, Presiding Chair
Robert W. Vernon	-	Public Arbitrator
Mark T. Dooks	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
David J. Anderson  
Chair, Public Arbitrator

August 23, 2005  
Signature Date

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Robert W. Vernon  
Public Arbitrator

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

\_\_\_\_\_  
Mark T. Dooks  
Non-Public Arbitrator

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

8/23/05  
Date of Service



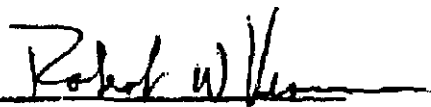
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Chair, Public Arbitrator

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Signature Date

  
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Robert W. Vernon  
Public Arbitrator

8/23/05  
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Signature Date

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