
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Donald P. Carner

Case Number: 04-01937

Names of the Respondents
First Union Brokerage Services, Inc.
n/k/a Wachovia Securities, LLC
Duane Lasher
Charles Gillingham

Hearing Site: Orlando, Florida

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Donald P. Carner, hereinafter referred to as "Claimant", appeared *pro se*.

For First Union Brokerage Services, Inc. n/k/a Wachovia Securities, LLC ("Wachovia"), Duane Lasher ("Lasher") and Charles Gillingham ("Gillingham"), hereinafter collectively referred to as "Respondents": Andrew R. Park and Beverly Jo Slaughter, Associates General Counsel with Respondent Wachovia, Richmond, Virginia.

CASE INFORMATION

Statement of Claim filed on or about: March 22, 2004.

Claimant signed the Uniform Submission Agreement on: May 6, 2004.

Joint Answer to Statement of Claim filed by Respondents on or about: July 7, 2004.

Respondent Wachovia signed the Uniform Submission Agreement on: July 6, 2004.

Respondent Lasher signed the Uniform Submission Agreement on: July 2, 2004.

Respondent Gillingham signed the Uniform Submission Agreement on: June 5, 2004.

CASE SUMMARY

Claimant alleged the following causes of action: 1) suitability; 2) misrepresentations and non-disclosures; 3) omission of facts; 4) failure to supervise; and 5) violation of Chapter 517, Florida Statutes. The causes of action relate to investments in preferred stocks, unit investment trust, mutual funds and variable annuities including but not limited to American Skandia and American Enterprise Life.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of \$340,853.00; 2) punitive damages in the amount of \$1,022,560.00; 3) costs; 4) attorneys' fees; and 5) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested: 1) dismissal of the Statement of Claim in its entirety; 2) denial of Claimant's claims; 3) attorneys' fees; 4) expungement of all reference to the above captioned arbitration from Respondents Lasher's and Gillingham's registration records maintained by the NASD Central Registration Depository ("CRD"); and 5) such other relief the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about January 21, 2005, Respondents filed their Motion to Exclude. On or about February 7, 2005, Claimant filed his Motion to Continue. On or about February 8, 2005, Claimant filed his Motion to Deny Respondents' Motion to Exclude and Request for Sanctions and/or Attorneys' Fees and Costs pursuant to Chapter 517, Florida Statutes, and Section 57.105. On or about February 8, 2005, Respondents filed their Response to Claimant's Motion to Continue and Motion to Deny Respondents' Request to Exclude. On or about February 9, 2005, the Panel denied Claimant's Motion for Sanctions, deferred Respondents' Motion to Exclude and denied Claimant's Motion to Continue. At the evidentiary hearing, the Panel granted Respondents' Motion to Exclude.

At the evidentiary hearing and upon conclusion of Claimant's case-in-chief, Respondents moved for a directed verdict against Claimant. Claimant opposed the motion. The Panel granted the motion.

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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims, including statutory claims under Chapter 517, Florida Statutes, are denied in their entirety.
2. Claimant's requests for punitive damages and attorneys' fees are denied.
3. Respondents' request for attorneys' fees is denied.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from

Respondents Lasher's and Gillingham's registration records maintained by the NASD CRD with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Lasher and Gillingham must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

5. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 500.00

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. Accordingly, Respondent Wachovia is a member firm and a party.

Member surcharge = \$2,800.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 @ \$450.00 per session = \$ 450.00
Pre-hearing conference: December 14, 2004 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 per session = \$2,400.00
Pre-hearing conferences: October 4, 2004 1 session
February 9, 2005 1 session

Four (4) Hearing sessions @ \$1,200.00 per session = \$4,800.00
Hearing Dates: February 22, 2005 2 sessions
February 23, 2005 2 sessions

Total Forum Fees = \$7,650.00

The Panel has assessed forum fees in the amount of \$3,825.00 to Claimant and \$3,825.00 jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$3,825.00
Total Fees	= \$4,325.00
<u>Less payments</u>	= \$1,750.00
Balance Due NASD Dispute Resolution	= \$2,575.00

Respondent Wachovia is solely liable for:

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

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,825.00
<u>Total Fees</u>	= \$3,825.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$3,825.00

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

ARBITRATION PANEL

<i>James Barry Wright</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Patricia Gunn Zimmerman, CPA</i>	-	<i>Public Arbitrator</i>
<i>Herbert Schwartz</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

_____/s/_____
James Barry Wright
Public Arbitrator, Presiding Chairperson

February 24, 2005
Signature Date

_____/s/_____
Patricia Gunn Zimmerman, CPA
Public Arbitrator

February 24, 2005
Signature Date

_____/s/_____
Herbert Schwartz
Non-Public Arbitrator

February 24, 2005
Signature Date

February 24, 2005
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 04-01937

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ARBITRATION PANEL

James Barry Wright

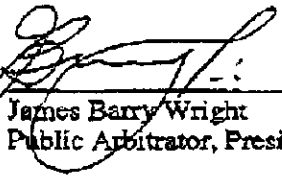
Patricia Gunn Zimmerman, CPA

Herbert Schwartz

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

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James Barry Wright
Public Arbitrator, Presiding Chairperson2/24/05
Signature DatePatricia Gunn Zimmerman, CPA
Public Arbitrator

Signature Date

Herbert Schwartz
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Signature Date

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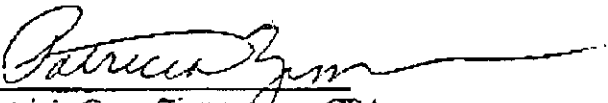
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Public Arbitrator

2/24/05

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