

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Lucille Banahan

Case Number: 04-01979

Name of the Respondent  
Wachovia Securities, Inc.

Hearing Site: Naples, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Lucille Banahan, hereinafter referred to as "Claimant": Brian J. Neville, LLC, New York, New York.

For Wachovia Securities, Inc., hereinafter referred to as "Respondent": Beverly Jo Slaughter, Esq., Legal Department, Wachovia, Richmond, Virginia.

**CASE INFORMATION**

Statement of Claim filed on or about: March 19, 2004.

Claimant signed the Uniform Submission Agreement: March 15, 2004.

Statement of Answer filed by Respondent on or about: June 4, 2004.

Respondent signed the Uniform Submission Agreement: June 4, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitable recommendations; negligence and breach of the duty of due care; fraud and negligent misrepresentation; violation of federal securities laws; violation of industry rules; failure to supervise; and, respondeat superior. The causes of action relate to Claimant's investments in unspecified variable annuities, fixed annuities, equity mutual funds and individual stocks.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested an Award against Respondent as follows: restoring out-of-pocket damages of approximately \$250,000.00; restoring all commissions and fees Claimant has paid to Respondent; directing the payment of interest on all amounts deposited at Respondent from the date Claimant's account was received there to the date of the Award at the statutory rate of nine percent (9%); or well managed account damages; reimbursement of all costs, including any expert fees necessary to calculate losses, filing and hearing fees; and, such other and further relief as the Panel deemed just and equitable.

Respondent requested that Claimant's claims be rejected, no damages be awarded, and all costs and forum fees be assessed against Claimant.

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

On or about February 7, 2005, Claimant filed with NASD Dispute Resolution a request that the hearing location in this matter be changed from Tampa, Florida to Naples, Florida due to Claimant's deteriorating health. Respondent did not oppose the request. On or about February 24, 2005, the arbitration panel issued an order which granted said request.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

Respondent is found liable on the claims of suitability and failure to supervise and shall pay to Claimant the sum of \$135,000.00, plus interest at the Florida statutory rate from May 12, 2005 until the date of payment of the Award.

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

Initial claim filing fee	= \$300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,700
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$2,750.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

May 10-12, 2005 Hearing Dates, adjournment by Respondent= \$1,125.00

### **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:

No three-day cancellation fees were 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.

No injunctive relief fees were incurred in this matter.

### **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: April 1, 2005 1 session	
One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: July 26, 2004 1 session	
Six (6) Hearing sessions @ \$1,125.00	= \$6,750.00
Hearing Dates: December 19, 2005 2 sessions	
December 20, 2005 2 sessions	
December 21, 2005 2 sessions	
Total Forum Fees	= \$8,325.00

The Panel has assessed \$4,162.50 of the forum fees to Claimant.

The Panel has assessed \$4,162.50 of the forum fees to Respondent.

### **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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Administrative costs of \$2,735.08 are assessed to Claimant representing the costs associated with the arbitration panel's travel to Naples, Florida to conduct the evidentiary hearing pursuant to Claimant's request (arbitrator Carlsen \$900.67, arbitrator Hoffman \$1,030.53 and arbitrator Meyer

\$803.88).

### **FEE SUMMARY**

Claimant is solely liable for:

Initial Filing Fee	= \$300.00
Forum Fees	= \$4,162.50
Administrative Costs	= \$2,735.08

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Total Fees	= \$7,197.58
Less payments	= \$1,425.00

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Balance Due NASD Dispute Resolution	= \$5,772.58
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Respondent is solely liable for:

Member Fees	= \$5,200.00
Adjournment Fees	= \$1,125.00
Forum Fees	= \$4,162.50

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Total Fees	= \$10,487.50
Less payments	= \$5,200.00

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Balance Due NASD Dispute Resolution	= \$5,287.50
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All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

### **ARBITRATION PANEL**

Thomas R. Carlsen	-	Public Arbitrator, Presiding Chair
Richard Hoffman, CFP	-	Public Arbitrator
Robert W. Meyer	-	Non-Public Arbitrator

### **Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas R. Carlsen  
Public Arbitrator, Presiding Chair

\_\_\_\_12/27/05\_\_\_\_  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Richard Hoffman, CFP  
Public Arbitrator

\_\_\_\_12/28/05\_\_\_\_  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Robert W. Meyer  
Non-Public Arbitrator

\_\_\_\_12/28/05\_\_\_\_\_  
Signature Date

\_\_\_\_12/29/05\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

Dec. 27, 2005 11:27 AM on

NO. 0103 P. 2

Arbitration No. 04-01979

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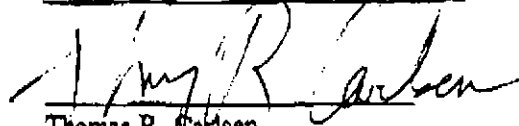
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Public Arbitrator, Presiding Chair12-27-05  
Signature Date

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Richard Hoffman, CFP  
Public Arbitrator

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Signature Date

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Public Arbitrator, Presiding Chair

  
Richard Hoffman, CFP  
Public Arbitrator

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NASD Dispute Resolution  
Arbitration No. 04-01979  
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Robert W. Meyer

Robert W. Meyer  
Non-Public Arbitrator

12, 28, 05

Signature Date

Date of Service (For NASD Dispute Resolution office use only)