

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Wachovia Securities, LLC

v.

04-02496

Minneapolis, Minnesota

Respondent

Thomas W. Ottman

Nature of Dispute: Member v. Associated Person

REPRESENTATION OF PARTIES

Wachovia Securities, LLC ("**Claimant**") was represented by Renan I. Sugarman, Esq., Chicago, Illinois.

Thomas W. Ottman ("**Respondent**") or ("**Ottman**") was represented by Adam A. Gillette, Esq., of Nichols Kaster & Anderson, PLLP, Denver, Colorado. Respondent Ottman did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed on or about April 1, 2004. The Submission Agreement of Claimant was signed on or about April 1, 2004.

The Statement of Answer was filed by Respondent, Thomas W. Ottman, on or about October 8, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of employment contract and failure to repay a promissory note. The causes of action related to Respondent's alleged failure to honor and repay a promissory note dated December 10, 1999, hereinafter referred to as "the Note," which became due when he resigned on October 17, 2003.

Respondent denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant's claim is barred by the doctrines of waiver, estoppel and unclean hands; Claimant failed to mitigate its damages, if any; and any alleged damages suffered by Claimant were caused, in whole or in part, by Claimant's own conduct.

RELIEF REQUESTED

Claimant requested an award of \$484,915.46, the principal balance due under the promissory note dated December 10, 1999, plus interest, costs, attorney's fees and any other relief the panel deemed just and proper.

Respondent requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

On March 1, 2005, Respondent's counsel requested a continuance of the hearing on the basis that Respondent was out of town. Claimant objected on the grounds that Respondent had notice and delay would prejudice Claimant. After deliberation, the panel ruled it would hear all witnesses on March 1, 2005, except Respondent, who was directed to appear on March 2, 2005. On March 2, 2005, Respondent's counsel appeared at the hearing and again requested a continuance on the same grounds as the prior day. Claimant again objected. After deliberation, the panel denied the Motion and the hearing went forward on March 2, 2005 without Respondent present.

Respondent, Thomas W. Ottman, did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of NASD Code of Arbitration Procedure (the "Code") and having appeared through counsel and answered the Statement of Claim is bound by the determination of the arbitration panel on all issues submitted.

The appearing parties have agreed 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 ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Thomas W. Ottman, is liable for and shall pay to Claimant, Wachovia Securities, LLC, the sum of Four Hundred Eighty Four Thousand Nine Hundred Fifteen Dollars and Forty Six Cents (\$484,915.46) in compensatory damages;

2. Respondent, Thomas W. Ottman, is liable for and shall pay to Claimant, Wachovia Securities, LLC, interest in the amount of Thirty Three Thousand Two Hundred Fifteen Dollars and No Cents (\$33,215.00) pursuant to the terms of the Note;
3. Respondent, Thomas W. Ottman, is liable for and shall pay to Claimant, Wachovia Securities, LLC, attorneys' fees in the amount of Twenty Thousand Dollars and No Cents (\$20,000.00) pursuant to the terms of the Note;
4. Respondent, Thomas W. Ottman, is liable for and shall pay to Claimant, Wachovia Securities, LLC, costs in the amount of Three Thousand Dollars and No Cents (\$3,000.00) pursuant to the terms of the Note; and
5. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 1,000

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, the member firm is Wachovia Securities, LLC.

Member surcharge = \$ 1,700
Pre-hearing process fee = \$ 750
Hearing process fee = \$ 2,750

Forum Fees and Assessments

The Arbitration 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:

Two (2) Pre-hearing sessions with Panel x \$ 1,125 = \$ 2,250

Pre-hearing conferences: 09/09/2004 1 session
 11/01/2004 1 session

Two (2) Hearing sessions with Panel x \$ 1,125 = \$ 2,250

Hearing Dates: 03/01/2005 1 session
 03/02/2005 1 session

Total Forum Fees = \$ 4,500

The Arbitration Panel has assessed \$ 4,500 of the forum fees to Thomas W. Ottman.

FEE SUMMARY

Claimant, Wachovia Securities, LLC, is liable for:

| | |
|---|-------------------|
| Initial Filing Fee | = \$ 1,000 |
| Member Fees | = \$ 5,200 |
| Total Fees | = \$ 6,200 |
| <u>Less payments</u> | <u>= \$ 7,325</u> |
| Balance Refunded By NASD Dispute Resolution | = \$ 1,125 |

Respondent, Thomas W. Ottman, is liable for:

| | |
|-------------------------------------|-------------------|
| <u>Forum Fees</u> | <u>= \$ 4,500</u> |
| Total Fees | = \$ 4,500 |
| <u>Less payments</u> | <u>= \$ 0</u> |
| Balance Due NASD Dispute Resolution | = \$ 4,500 |

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

ARBITRATION PANEL

Joan M. Schroeder, Esq. – Non-Public Arbitrator, Presiding Chair
Julie A. Hennen – Non-Public Arbitrator
John J. Sagness – Non-Public Arbitrator

Concurring Arbitrators:

Joan M. Schroeder, Esq.
Non-Public Arbitrator, Presiding Chair

Signature Date

Julie A. Hennen
Non-Public Arbitrator

Signature Date

John J. Sagness
Non-Public Arbitrator

Signature Date

8/4/05
Date of Service (NASD use only)

ARBITRATION PANEL

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Julie A. Hennen - Non-Public Arbitrator
John J. Sagness - Non-Public Arbitrator

Concurring Arbitrators:

Joan M. Schroeder
Joan M. Schroeder, Esq.
Non-Public Arbitrator, Presiding Chair

03-05-2005
Signature Date

Julie A. Hennen
Julie A. Hennen
Non-Public Arbitrator

Signature Date

John J. Sagness
John J. Sagness
Non-Public Arbitrator

Signature Date

2/4/05
Date of Service (NASD use only)

ARBITRATION PANEL

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Julie A. Hennen - Non-Public Arbitrator
John J. Sagness - Non-Public Arbitrator

Concurring Arbitrators:

Joan M. Schroeder, Esq.
Non-Public Arbitrator, Presiding Chair

Julie A. Hennen
Julie A. Hennen
Non-Public Arbitrator

Signature Date

3/4/05
Signature Date

John J. Sagness
Non-Public Arbitrator

Signature Date

2/4/05
Date of Service (NASD use only)

ARBITRATION PANEL

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Non-Public Arbitrator, Presiding Chair

Signature Date

Julie A. Hennen
Non-Public Arbitrator

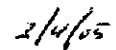
Signature Date



John J. Sagness
Non-Public Arbitrator



Signature Date



Date of Service (NASD use only)