

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert Montgomery, John Montgomery, and Gail A. Dwan, Claimants v. Wachovia Securities, LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Michael J. Minervini, and James G. Osborne, Respondents

Case Number: 04-02827

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimants:

Timothy D. McGonigle, Esq.
Attorney at Law
Santa Monica, California

For Respondents Wachovia Securities, LLC,
Michael J. Minervini, and James G. Osborne:

Michael Abbott, Esq.
Jones Bell, Abbott, Fleming &
Fitzgerald
Los Angeles, California

For Respondent Merrill Lynch, Pierce, Fenner
& Smith Incorporated ("Merrill Lynch"):

John W. Cotton, Esq.
Cotton & Gundzik LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: April 15, 2004

Claimants' Joint Uniform Submission Agreement signed: February 24, 2004 and
June 2, 2004

Joint Statement of Answer filed by Respondents Wachovia Securities, LLC, Michael J.
Minervini, and James G. Osborne: September 9, 2004

Statement of Answer filed by Respondent Merrill Lynch: September 14, 2004

Respondent Wachovia Securities, LLC's Uniform Submission Agreement signed:
September 9, 2004

Respondent Merrill Lynch's Uniform Submission Agreement signed: July 21, 2004

Respondent Michael J. Minervini's Uniform Submission Agreement signed:
September 22, 2004

Respondent James G. Osborne's Uniform Submission Agreement signed:
September 17, 2004

CASE SUMMARY

Claimants alleged negligence, breach of contract, fraud, and fraud and rescission based on fraud. Claimants' claims involved unspecified securities.

Unless specifically admitted in their Answer, Respondents Wachovia Securities, LLC, Michael J. Minervini, and James G. Osborne denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in its Answer, Respondent Merrill Lynch denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested \$300,000.00 in compensatory damages, unspecified punitive damages, and costs, including attorney's fees.

Respondents Wachovia Securities, LLC, Michael J. Minervini, and James G. Osborne requested dismissal of Claimants' Statement of Claim in its entirety and assessment of all forum fees against Claimants.

Respondent Merrill Lynch requested dismissal of Claimants' Statement of Claim in its entirety, expungement of Merrill Lynch's CRD record, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On February 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 March 11, 2005, Claimants dismissed Respondent Merrill Lynch with prejudice.

On May 30, 2006, Claimant Gail A. Dwan filed a request to be dismissed from this arbitration. On June 7, 2006, the Arbitration Panel issued an Order granting Claimant Gail A. Dwan's request for dismissal.

On September 19, 2006, Respondents Wachovia Securities, LLC, Michael J. Minervini, and James G. Osborne filed a notice that the parties had reached a confidential settlement agreement, and that Respondents Michael J. Minervini and James G. Osborne would request a recommendation of expungement of their registration records maintained by the Central Registration Depository ("CRD") at the hearing scheduled for September 27, 2006. Respondents also notified the Panel that Claimants did not oppose their expungement request. On September 27, 2006, the Panel and Respondents held a hearing regarding the expungement request. Claimants received due notice of the hearing, and orally notified NASD that the parties had reached a settlement agreement and that Claimants would not appear at the hearing.

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) The parties have reached a confidential settlement agreement.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Michael J. Minervini's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Michael J. Minervini must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the Arbitration Panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous;
and

The claim, allegation, or information is false.

- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent James G. Osborne's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondent James G. Osborne must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the Arbitration Panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous;

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.

- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) 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 |
|--------------------------|-------------|

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> | <u>= \$ 2,750.00</u> |
| Total Member Fees | = \$ 5,200.00 |

The member firm Merrill Lynch is also a party and the following fees are assessed:

| | |
|--------------------------------|----------------------|
| Member Surcharge | = \$ 1,700.00 |
| <u>Pre-Hearing Process Fee</u> | <u>= \$ 750.00</u> |
| Total Member Fees | = \$ 2,450.00 |

Adjournment Fees

The following adjournment fees are assessed:

| | |
|---|---------------|
| February 21-24, 2006 hearing adjournment requested by parties | = \$ 1,125.00 |
|---|---------------|

The adjournment fee of \$1,125.00 was administratively waived pursuant to the NASD Code of Arbitration Rule 10403(b).

Forum Fees and Assessments

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

| | |
|--|----------------------|
| 1 Decision on discovery-related motion on the papers with 1 arbitrator @ \$200.00 | = \$ 200.00 |
| 2 Pre-hearing conference sessions with the Panel @ \$1,125.00/session | = \$ 2,250.00 |
| Pre-hearing conferences: March 30, 2005 | 1 session |
| June 7, 2006 | 1 session |
| 1 Hearing session @ \$1,125.00/session | = \$ 1,125.00 |
| Hearing: September 27, 2006 | 1 session |
| Total Forum Fees | = \$ 3,575.00 |

1. The Panel assessed \$1,787.50 of the forum fees jointly and severally to Claimants Robert Montgomery and John Montgomery.
2. The Panel assessed \$1,787.50 of the forum fees jointly and severally to Respondents Wachovia Securities, LLC, Michael J. Minervini, and James G. Osborne.

Fee Summary

1. Claimants Robert Montgomery, John Montgomery, and Gail A. Dwan are charged jointly and severally with the following fees and costs:

| | |
|--|------------------|
| Initial Filing Fee | = \$ 300.00 |
| Less payments | = \$(300.00) |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |
2. Claimants Robert Montgomery and John Montgomery are charged jointly and severally with the following fees and costs:

| | |
|--|--------------------|
| Forum Fees | = \$ 1,787.50 |
| Less payments | = \$(1,125.00) |
| Balance Due NASD Dispute Resolution | = \$ 662.50 |
3. Respondent Wachovia Securities, LLC is charged with the following fees and costs:

| | |
|--|------------------|
| Member Fees | = \$ 5,200.00 |
| Less payments | = \$(5,200.00) |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

4. Respondent Merrill Lynch is charged with the following fees and costs:

| | |
|--|-----------------------|
| Member Fees | = \$ 2,450.00 |
| <u>Less payments</u> | <u>= \$(2,450.00)</u> |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

5. Respondents Wachovia Securities, LLC, Michael J. Minervini, and James G. Osborne are charged jointly and severally with the following fees and costs:

| | |
|---|-----------------------|
| Forum Fees | = \$ 1,787.50 |
| <u>Less payments made by Wachovia Securities, LLC</u> | <u>= \$(1,787.50)</u> |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

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

| | | |
|---------------------|---|------------------------------------|
| Michael R. Mitchell | - | Public Arbitrator, Presiding Chair |
| Louis P. Davis | - | Public Arbitrator |
| Harrison Lee | - | Non-Public Arbitrator |

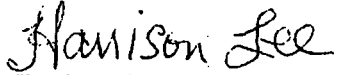
Concurring Arbitrators' Signatures


Michael R. Mitchell
Chair, Public Arbitrator

Sep. 27, 2006
Signature Date


Louis P. Davis
Public Arbitrator

9/27/06
Signature Date


Harrison Lee
Non-Public Arbitrator

9-28-06
Signature Date

9/28/06
Date of Service