

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

John Garda (Claimant) vs. First Union Securities a/k/a Wachovia Securities, LLC and Scott D. Luikart (Respondents)

Case Number: 04-03410

Hearing Site: Cleveland, Ohio

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

REPRESENTATION OF PARTIES

Claimant John Garda hereinafter collectively referred to as "Claimant": James S. Jones, Esq., James S. Jones, L.P.A. Poland, Ohio.

Respondents First Union Securities a/k/a Wachovia Securities, LLC ("Wachovia") and Scott D. Luikart ("Luikart") hereinafter collectively referred to as "Respondents": Derek C. Anderson, Esq., and Jason C. Moreau, Esq., Michael & Ward, LLP, Boston, MA.

CASE INFORMATION

Statement of Claim filed on or about: May 7, 2004.

Claimant signed the Uniform Submission Agreement: May 7, 2004.

Statement of Answer filed by Respondents on or about: August 6, 2004.

Wachovia signed the Uniform Submission Agreement: July 1, 2004.

Luikart signed the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: lack of suitability, breach of fiduciary duty, misrepresentation, fraud, failure to supervise, and omission of facts. The causes of action relate to a Scudder annuity investment.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$80,548.89; punitive damages in the amount of \$161,097.78; costs of this arbitration, including reasonable attorneys' fees; and any other relief the arbitrators deem just and proper.

Respondents requested the dismissal of the Statement of Claim with prejudice; an award of all reasonable costs and expenses including forum fees; and such further relief as the Panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have 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. Respondents are jointly and severally liable for and shall pay Claimant compensatory damages in the amount of \$12,000.00.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Wachovia Securities, LLC is a party.

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

Forum Fees and Assessments

The Panel has 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 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 one arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: September 16, 2005	1 session

Three (3) Pre-hearing sessions with Panel @ \$1,125.00 per session	= \$ 3,375.00
Pre-hearing conferences: November 18, 2004	1 session
January 4, 2005	1 session

May 16, 2005

1 session

Six (6) Hearing sessions @ \$1,125.00 per session = \$ 6,750.00

Hearing Dates: December 19, 2005 2 sessions
 December 20, 2005 2 sessions
 December 21, 2005 2 sessions

Total Forum Fees = \$ 10,575.00

1. The Panel has assessed \$5,287.50 of the forum fees to Claimant.
2. The Panel has assessed \$5,287.50 of the forum fees to Respondent Wachovia.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 5,287.50
Total Fees	= \$ 5,587.50
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 4,162.50

2. Wachovia Securities, LLC is solely liable for:


Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 5,287.50
Total Fees	= \$ 10,487.50
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 5,287.50

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

ARBITRATION PANEL

Marc A. Winters	-	Public Arbitrator, Presiding Chairperson
Richard R. Edmister, Esq.	-	Public Arbitrator
David Darrah	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Marc A. Winters
Public Arbitrator, Presiding Chairperson

12/23/05

Signature Date

Richard R. Edmister, Esq.
Public Arbitrator

Signature Date

David Darrah
Non-Public Arbitrator

Signature Date

December 27, 2005

Date of Service (For NASD Dispute Resolution use only)

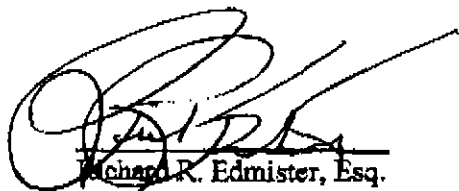
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Richard R. Edmister, Esq.	•	Public Arbitrator
David Darrah	•	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Marc A. Winters
Public Arbitrator, Presiding Chairperson

Signature Date



Richard R. Edmister, Esq.
Public Arbitrator

DECEMBER 23, 2005

Signature Date

David Darrah
Non-Public Arbitrator

Signature Date

December 27, 2005

Date of Service (For NASD Dispute Resolution use only)

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Richard R. Edmister, Esq.	-	Public Arbitrator
David Darrah	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Marc A. Winters
Public Arbitrator, Presiding Chairperson

Signature Date

Richard R. Edmister, Esq.
Public Arbitrator

Signature Date



David Darrah
Non-Public Arbitrator

12/26/05
Signature Date

December 27, 2005

Date of Service (For NASD Dispute Resolution use only)