

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Wachovia Securities, LLC

And

04-03539

Phoenix, Arizona

Name of Respondents

Walter Jerome Clarke

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Nature of the Dispute: Member vs. Associated Person.

**REPRESENTATION OF PARTIES**

Wachovia Securities, LLC ("**Claimant**") was represented by Ronald P. Kane and Diane C. Fischer of Kane & Fischer, Ltd., Chicago, Illinois.

Walter Jerome Clarke ("**Respondent**") was represented by Michael Blumenfeld of Freeman, Freeman & Smiley, LLP, Los Angeles, California.

**CASE INFORMATION**

Statement of Claim filed by on or about: May 12, 2004. Claimant's Submission Agreement was signed on May 12, 2004.

Respondent's Answer and Affirmative Defenses was filed on or about September 24, 2004. Respondent's Counterclaim was filed on or about: September 24, 2004. Respondent's Submission Agreement was signed on September 24, 2004.

**CASE SUMMARY**

Wachovia alleged, among other things, that Clarke is liable for damages in the principal amount of \$708,183.20, plus accrued and accruing interest and attorneys' fees and costs in accordance with the terms of a Promissory Note executed by Clarke on September 11, 2000, which became due and owing to Wachovia upon Clarke's termination from Wachovia on April 25, 2003, as well as repayment of a Profit Formula Deficit existing at the time of Clarke's termination from Wachovia (the "Claim").

Clarke has denied any liability to Wachovia and has asserted a Counterclaim ("Counterclaim") against Wachovia in which Clarke alleges, among other things, constructive discharge, fraudulent misrepresentation, and violation of Arizona Labor Code Sections 25-355 and the Trade and Commerce Sections 44-1798.02, and breach of contract and the implied covenant of good faith and fair dealing therein.

Wachovia has denied any liability as to the matters alleged in Clarke's Counterclaim.

### **RELIEF REQUESTED**

Wachovia requested the following relief:

Compensatory Damages:	\$746,183.87 (\$708,183.20 balance due under Note plus \$38,000.67 Profit Formula Deficit)
Interest:	\$183,070.26 (through October 15, 2005)
Costs:	\$6,277.00
Attorneys' Fees:	\$18,636.00
<b>TOTAL:</b>	<b>\$954,167.13</b>

Clarke requested the following relief: an award be entered for actual damages in excess of \$2 million, plus unspecified punitive damages, attorneys' fees, and costs. Clarke also requested that the Note be rescinded and that the transitional compensation received by Clarke thereunder be retained by Clarke in partial satisfaction of the alleged expenses, damages and losses incurred by him.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties resolved their dispute arising out of, and in connection with, the aforementioned Claim and Counterclaim by executing a Settlement Agreement. Pursuant to the terms of that Settlement Agreement, this award shall be signed by the arbitrators but no action will be taken by Wachovia to enforce the award unless Clarke fails to comply with the payment terms of the Settlement Agreement. Should Clarke abide by the terms of the Settlement Agreement and pay Wachovia the monies as agreed to, this Stipulated Award shall be deemed to be satisfied.

The parties stipulated to the entry of this award as part of the settlement of this matter. Pursuant to the Settlement Agreement entered into between the parties, Clarke waived any right to an Arbitration hearing.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies. The parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the pleadings and the stipulation of the parties, but without making any findings of fact or conclusions of law, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination and find as follows:

The parties have entered into a Settlement Agreement. As part of the Settlement Agreement, the parties have consented to the following award:

1. Walter J. Clarke shall pay to Wachovia Securities, LLC the sum of \$954,167.13, plus interest at the rate of 8.75% per annum from October 15, 2005, to the date of payment.
2. Except as otherwise specified herein, each party shall bear its own costs and attorneys fees.
3. Walter J. Clarke is liable for and shall pay to the NASD Dispute Resolution, Inc. one-half of any forum fees and/or hearing cancellation fees assessed by the Panel.
4. Wachovia Securities, LLC are liable for and shall pay to the NASD Dispute Resolution, Inc. one-half of any forum fees and/or hearing cancellation fees assessed by the Panel.
5. Any and all relief not specifically addressed herein 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	= \$1,250.00
Counter 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(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(s) is Wachovia Securities, LLC.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	5,000.00
Total Member Fees	\$	8,000.00

#### 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 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 Pre-hearing session(s) with Panel	x	1,200.00	\$	1,200.00
	January 4, 2005	1 session		
Total Forum Fees			\$	1,200.00

The Arbitration Panel has assessed \$600.00 of the forum fees to Wachovia Securities, LLC.

The Arbitration Panel has assessed \$600.00 of the forum fees to Walter Jerome Clarke.

Pursuant to Rule 10332(f) of the NASD Code of Arbitration Procedure, the NASD is retaining the balance of the hearing session deposit of Wachovia Securities, LLC in the amount of \$600.00.

Pursuant to Rule 10332(f) of the NASD Code of Arbitration Procedure, the NASD is retaining the balance of the hearing session deposit of Walter Jerome Clarke in the amount of \$600.00.

#### Fee Summary

Claimant, Wachovia Securities, LLC, is liable for:

Initial Filing Fee	= \$	1,250.00
Member Fees	= \$	8,000.00
Forum Fees	= \$	600.00
Retained hearing session deposit	= \$	600.00
Total Fees	= \$	10,450.00
<u>Less payments</u>	= \$	-11,200.00
Balance to be refunded by NASD Dispute Resolution	= \$	- 750.00

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Arbitration No. 04-03539  
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Respondent, Walter Jerome Clarke, is liable for:

Type Filing Fee	= \$	500.00
Retained hearing session deposit	= \$	600.00
<u>Forum Fees</u>	= \$	600.00
Total Fees	= \$	1,700.00
<u>Less payments</u>	= \$	-1,800.00
Balance to be refunded by NASD Dispute Resolution	= \$	- 100.00

All balances are due to NASD Dispute Resolution.

**ARBITRATION PANEL**

Charles C. DeMoss - Non-Public Arbitrator, Presiding Chair  
Douglas E. McArthur - Non-Public Arbitrator  
Raymond Peter Dimuzio, CPA - Non-Public Arbitrator

Concurring Arbitrators:

  
Charles C. DeMoss  
Non-Public Arbitrator, Presiding Chair

11-2-2005  
Signature Date

  
Douglas E. McArthur  
Non-Public Arbitrator

Signature Date

  
Raymond Peter Dimuzio, CPA  
Non-Public Arbitrator

Signature Date

Nov. 25, 2005  
Date of Service (For NASD office use only)

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Arbitration No. 04-03539  
Stipulated Award Page 5 of 5

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Raymond Peter Dimuzio, CPA  
Non-Public Arbitrator

Signature Date

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Raymond Peter Dimuzio, CPA  
Non-Public Arbitrator

11/22/05  
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Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)