

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

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In the Matter of the Arbitration Between:

Wells Fargo Investments, LLC, Claimant v. Wachovia Securities, Inc. (n/k/a Wachovia Securities, LLC), Kent R. Elliott, Matthew H. Schmitt, and Diana M. Sanchez, Respondents

Wachovia Securities, Inc. (n/k/a Wachovia Securities, LLC), Kent R. Elliott, Matthew H. Schmitt, and Diana M. Sanchez, Counter-Claimants v. Wells Fargo Investments, LLC, Counter-Respondent

Wachovia Securities, Inc. (n/k/a Wachovia Securities, LLC), Kent R. Elliott, Matthew H. Schmitt, and Diana M. Sanchez, Third-Party Claimants v. James R. Monroe and Mark D. Webster, Third-Party Respondents

Case Number: 04-06106

Hearing Site: San Francisco, California

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Nature of the Disputes:      Member v. Member and Associated Persons  
   Member and Associated Persons v. Member  
   Member and Associated Persons v. Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant/Counter-Respondent Wells Fargo Investments, LLC ("Wells Fargo") and Third-Party Respondents James R. Monroe ("Monroe") and Mark D. Webster ("Webster"):

Stephanie Miller, Esq.  
Natalie Pierce, Esq.  
Carroll, Burdick & McDonough LLP  
San Francisco, California

For Respondents/Counter-Claimants/Third-Party Claimants Wachovia Securities, Inc. ("Wachovia"), Kent R. Elliott ("Elliott"), Matthew H. Schmitt ("Schmitt"), and Diana M. Sanchez ("Sanchez"):

Susan L. Schoenig, Esq.  
Julie Raney, Esq.  
McDonough, Holland & Allen PC  
Sacramento, California

**CASE INFORMATION**

Well Fargo's Statement of Claim filed: August 26, 2004

Wells Fargo's Uniform Submission Agreement signed: August 25, 2004

Joint Statement of Answer to Statement of Claim filed by Wachovia, Elliott, Schmitt, and Sanchez: November 5, 2004

Counterclaim/Third-Party Claim filed by Wachovia, Elliott, Schmitt, and Sanchez: November 5, 2004

Wachovia's Uniform Submission Agreement signed: November 5, 2004

Elliott's Uniform Submission Agreement signed: November 5, 2004

Schmitt's Uniform Submission Agreement signed: November 5, 2004

Sanchez' Uniform Submission Agreement signed: November 5, 2004

Answer to Counterclaim filed by Wells Fargo: November 29, 2004

Answer to Third-Party Claim filed by Webster: December 2, 2004

Answer to Third-Party filed by Monroe: December 2, 2004

Monroe's Uniform Submission Agreement signed: February 14, 2005

Webster's Uniform Submission Agreement signed: January 31, 2005

### **CASE SUMMARY**

Wells Fargo alleged breach of contract, misappropriation of trade secrets, breach of fiduciary duty, tortious interference with prospective economic advantage, and unfair competition. Elliott, Schmitt, and Sanchez left Wells Fargo to work for Wachovia.

Wachovia, Elliott, Schmitt, and Sanchez denied the allegations of wrongdoing set forth in Well Fargo's Statement of Claim and asserted various affirmative defenses. In their Counterclaim and Third-Party Claim, Wachovia, Elliott, Schmitt, and Sanchez alleged breach of written, oral, and implied contracts, breach of the covenant of good faith and fair dealing, nonpayment of wages, unfair business practices, unfair competition, intentional interference with prospective economic advantage, and defamation.

Wells Fargo, Monroe, and Webster denied the allegations of wrongdoing set forth in the Counterclaim/Third Party Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Wells Fargo requested in excess of \$1,000,000.00 in compensatory damages, unspecified punitive and consequential damages, injunctive relief, and costs, including attorney's fees.

Wachovia, Elliott, Schmitt, and Sanchez requested dismissal of Well Fargo's Statement of Claim in its entirety, and costs, including attorney's fees. In their Counterclaim/Third-Party Claim, Wachovia, Elliott, Schmitt, and Sanchez requested unspecified compensatory damages, punitive damages, an injunction, restitution and disgorgement, restoration of Elliott's, Schmitt's, and Sanchez's U-5, a letter of apology to Elliott's, Schmitt's, and Sanchez's clients, interest, and costs, including attorney's fees.

Wells Fargo, Monroe, and Webster requested dismissal of the Counterclaim/Third-Party Claim in its entirety, and costs, including attorney's fees.

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

On October 26, 2004, Wells Fargo and its 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.

On December 8, 2004, NASD received Wachovia, Elliott, Schmitt, and Sanchez's signed Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On December 23, 2004, and January 31, 2005, Monroe and Webster, respectively, 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.

After deliberating on March 17, 2006, the Panel requested a declaration of attorneys' fees from Wells Fargo. On March 23, 2006, Wells Fargo filed the requested declarations. On March 30, 2006, Wachovia, Elliott, Schmitt, and Sanchez filed an opposition to Wells Fargo's request for attorneys' fees. On April 5, 2006, Wells Fargo filed a reply in support of its request for attorneys' fees. On April 18, 2006, the Panel deliberated and, with the issuance of this award, decided to award attorneys' fees to Wells Fargo.

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, evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Wachovia is liable to and shall pay Wells Fargo the sum of \$510,000.00 in compensatory damages and attorneys' fees. Attorneys' fees are awarded pursuant to the Uniform Trade Secrets Act, Cal. Civ. Code §3426.4.
- 2) The Panel finds Elliott and Schmitt culpable but not liable for any monetary damages.
- 3) Sanchez is dismissed with prejudice.
- 4) Wachovia, Elliott, Schmitt, and Sanchez' counterclaims and third-party claims are denied in their entirety.
- 5) NASD forum fees are assessed to Wachovia.
- 6) 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	= \$ 1250.00
Counterclaim/Third-Party Claim filing fee	= \$ 500.00

#### **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 firms Wells Fargo and Wachovia are parties and the following fees are assessed to each:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 7,000.00</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:

(3) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$ 1,350.00

Pre-hearing conferences:      September 12, 2005      1 session  
   September 27, 2005      1 session  
   October 3, 2005              1 session

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$ 1,200.00

Pre-hearing conference:      February 23, 2005      1 session

(11) Hearing sessions @ \$1,200.00/session = \$13,200.00

Hearings:                      October 17, 2005              2 sessions  
   October 18, 2005              1 session  
   October 19, 2005              2 sessions  
   October 20, 2005              2 sessions  
   January 30, 2006              2 sessions  
   January 31, 2006              1 session  
   March 8, 2006                1 session

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**Total Forum Fees** = **\$15,750.00**

The Panel assessed the entire \$15,750.00 in forum fees to Wachovia.

### **Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Wells Fargo requested 16 audio-transcripts @ \$15.00/tape = \$ 240.00

Wachovia requested 16 audio-transcripts @ \$15.00/tape = \$ 240.00

**Fee Summary**

1. Wells Fargo is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,250.00
Member Fees	= \$ 7,000.00
<u>Administrative Costs</u>	= \$ 240.00
Total Fees	= \$ 8,490.00
<u>Less payments</u>	= \$(9,690.00)
<b>Refund Due</b>	<b>= \$(1,200.00)</b>

2. Wachovia, Elliott, Schmitt, and Sanchez are charged jointly and severally with the following fees and costs:

Counterclaim/Third-Party Claim Filing Fee	= \$ 500.00
<u>Less payments by Wachovia</u>	= \$ (500.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Wachovia is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 15,750.00
<u>Administrative Costs</u>	= \$ 240.00
Total Fees	= \$ 22,990.00
Less payments	= \$ (8,240.00)
<u>Less unused mediation deposit</u>	= \$ (113.75)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 14,636.25</b>

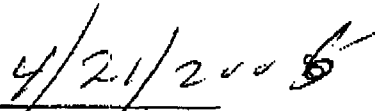
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Richard L. Jaeger	-	Public Arbitrator, Presiding Chair
William Ziering	-	Public Arbitrator
Richard A. Karoly	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures:**

  
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Richard L. Jaeger  
Chair, Public Arbitrator

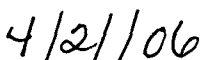
  
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Public Arbitrator

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Richard A. Karoly  
Non-Public Arbitrator

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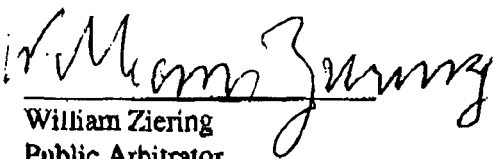
ARBITRATION PANEL

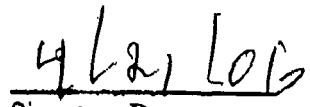
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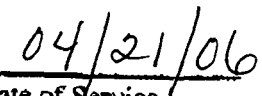
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Richard L. Jaeger  
Chair, Public Arbitrator

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Signature Date

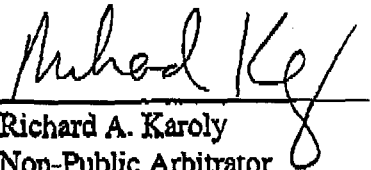
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William Ziering  
Public Arbitrator

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Signature Date

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Richard A. Karoly  
Non-Public Arbitrator

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April 20, 2006  
Signature Date

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04/21/06  
Date of Service