

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

The Estate of Roger Seddon,
Deborah J. Martinez, Carol L. Martinez and
Margaret J. Seddon,
as Co-Personal Representatives,
Claimants,

Case Number: 04-07044

Hearing Site: Albuquerque, New Mexico

v.

Wachovia Securities, LLC, Charles M. Ovis
and Mark W. Atkins,
Respondents.

Nature of the Dispute: Customers vs. Member and Associated Persons

REPRESENTATION OF PARTIES

Claimants, Deborah J. Martinez, Carol L. Martinez and Margaret J. Seddon, as Co-Personal Representatives of The Estate of Roger Seddon, hereinafter collectively referred to as "Claimants": Clinton W. Marrs, Esq. of Vogel Campbell & Blueber, P.C., located in Albuquerque, New Mexico.

Respondents, Wachovia Securities, LLC ("Wachovia"), Charles M. Ovis ("Ovis") and Mark W. Atkins ("Atkins"), hereinafter collectively referred to as "Respondents": Beverly Jo Slaughter, Esq. of Wachovia Securities, LLC, located in Richmond Virginia.

CASE INFORMATION

Statement of Claim filed on or about: October 5, 2004

Claimants jointly signed the Uniform Submission Agreement: September 10, 2004

Statement of Answer filed by Respondents, Wachovia, Ovis and Atkins, on or about: January 12, 2005

Respondent Wachovia signed the Uniform Submission Agreement: January 12, 2005

Respondent Ovis signed the Uniform Submission Agreement: January 11, 2005

Respondent Atkins signed the Uniform Submission Agreement: January 12, 2005

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty, negligence, breach of contract, failure to supervise, unfair practices, common law fraud, control person liability and Respondeat Superior. The causes of action relate to mutual funds, namely CAT, DD, EK, JPM, MO, SBC and AOL. Claimants asserted that these investments were speculative and high-risk technology funds that were not suitable to Claimants' financial needs and objectives.

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

1. The Statement of Claim fails to state a claim upon which relief may be granted, and fails to state facts sufficient to constitute a cause of action.
2. Claimants directed, approved and authorized each and every transaction in their account.
3. Claimants ratified each and every transaction in their account.
4. The Statement of Claim is barred by the doctrines of laches, waiver and estoppel.
5. The Claimants failed in their obligation to take reasonable steps to mitigate losses.
6. Any alleged losses that may have occurred were the direct result of market conditions, and other factors beyond the control of Respondents.
7. All transactions recommended to and made for or on behalf of Claimants were suitable for and in accordance with their investment objectives and financial condition.
8. There was no fiduciary duty owed to Claimants by Respondents as a matter of law, or under the circumstances of this case.
9. Any duties owed by Respondents to Claimants were fully and faithfully carried out.
10. Claimants are barred from recovery because they directly instructed, authorized and consented to the transactions in question.
11. There were no misrepresentations or omissions of material fact upon which the Claimants relied to their detriment.
12. At all times material herein, Claimants knew and were aware of the risks associated with their investments, and voluntarily chose to assume those risks. As such, Claimants are barred and estopped from recovery. The risks that Claimants assumed were the direct result and proximate result of their losses, if any.
13. Respondents are not liable to Claimants because Respondents had no duty, contractual or otherwise, to disclose or inform Claimants of any facts other than those which were disclosed, nor did Respondents breach any duty owed to Claimants, if such a duty existed.
14. The actions of Respondents are not the proximate cause of Claimants' alleged damages.
15. Respondents discharged their responsibilities in a professional and ethical manner and all of their actions were well within the parameters of accepted brokerage procedures and all exchange and governmental regulations.
16. To the extent any losses or diminution in value of Claimants' account occurred, such losses were the result of unforeseen market fluctuations and were within the risks assumed.
17. The damage allegedly suffered by Claimants has no causal relationship with any act committed by or legally attributable to Respondents.
18. Respondents, at all times, discharged their responsibilities properly and in good faith with respect to all investments made by Claimants.
19. All allegations as to Respondents set forth in the Statement of Claim are specifically denied.
20. This claim is also barred by any applicable affirmative defenses as a matter of law or equity.
21. The Statement of Claim is barred by the Statute of Limitations.
22. To the extent the Statement of Claim seeks damages for any alleged violation of the Rules of the NASD or any other securities industry self-regulatory organization, the Statement of Claim fails to state a claim upon which relief may be granted. There is no

private right of action for any alleged violation of the rules of the self-regulatory organization.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$400,000.00, punitive damages, or alternatively, treble damages in amount of \$800,000.00, disgorgement of all unnecessary or otherwise wrongful fees and commissions, costs, including filing fees and forum fees, attorney's fees, post-award interest at the rate of 8.75% and for such other and further relief as is just and proper.

Respondents, Wachovia, Ovis and Atkins, requested that the Statement of Claim be denied in its entirety.

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, Wachovia Securities, LLC, Charles M. Ovis and Mark W. Atkins, are jointly and severally liable for and shall pay Claimants, Deborah J. Martinez, Carol L. Martinez and Margaret J. Seddon, as Co-Personal Representatives of The Estate of Roger Seddon, the sum of \$225,000.00 as compensatory damages, plus interest at the rate of 6.00% per annum to accrue from July 14, 2006 until the date the award is paid in full.
2. Respondents, Wachovia Securities, LLC, Charles M. Ovis and Mark W. Atkins, are jointly and severally liable for and shall pay the Claimants, Deborah J. Martinez, Carol L. Martinez and Margaret J. Seddon, as Co-Personal Representatives of The Estate of Roger Seddon, the sum of \$15,000.00 as costs. In deciding to award costs, the Panel considered the pleadings filed by counsel, as well as the arguments presented on behalf of the parties, and determined that authority existed for an award of costs to the Claimants.
3. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
4. 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 = \$ 500.00

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 persons at the time of the events giving rise to the

dispute. Accordingly, Wachovia Securities, LLC is a party to this proceeding and is assessed the following fees:

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

September 13-16, 2005 hearing dates, adjourned by both parties to mediate within NASD	= \$ 1,200.00 (waived by NASD)
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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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: March 28, 2005 1 session	
November 22, 2005 1 session	

Seven (7) Hearing sessions @ \$1,200.00	= \$ 8,400.00
Hearing Dates: July 11, 2006 2 sessions	
July 12, 2006 2 sessions	
July 13, 2006 2 sessions	
July 14, 2006 1 session	

Total Forum Fees	= \$10,800.00
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1. The Panel has assessed 100% of the total forum fees in the amount of \$10,800.00 jointly and severally to Respondents, Wachovia Securities, LLC, Charles M. Ovis and Mark W. Atkins.

Fee Summary

1. Claimants, Deborah J. Martinez, Carol L. Martinez and Margaret J. Seddon, as Co-Personal Representatives of The Estate of Roger Seddon, are jointly liable for:

Initial Filing Fee	= \$ 500.00
<u>Less payments</u>	= \$ 1,700.00
Refund Due NASD Dispute Resolution	= \$ 1,200.00

2. Respondent, Wachovia Securities, LLC is solely liable for:

Member Fees	= \$ 8,550.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents, Wachovia Securities, LLC, Charles M. Ovis and Mark W. Atkins, are jointly and severally liable for:

Forum Fees	= \$10,800.00
<u>Less payments</u>	= \$ 0.00

Balance Due NASD Dispute Resolution = \$10,800.00

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

ARBITRATION PANEL

Peter J. Broullire, III, Esq.	-	Public Arbitrator, Presiding Chairperson
James Mark Eason	-	Public Arbitrator
Edward Allan Hindman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Peter J. Broullire, III, Esq.
Peter J. Broullire, III, Esq.
Public Arbitrator, Presiding Chairperson

7/18/06
Signature Date

/s/ James Mark Eason
James Mark Eason
Public Arbitrator

8/2/06
Signature Date

/s/ Edward Allan Hindman
Edward Allan Hindman
Non-Public Arbitrator

7/18/06
Signature Date

7/18/06
Date of Service (For NASD Dispute Resolution use only)

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Balance Due NASD Dispute Resolution

= \$10,800.00

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James Mark Eason	-	Public Arbitrator
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James Mark Eason
Public Arbitrator

Signature Date

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Non-Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chairperson

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Signature Date


James Mark Eason
Public Arbitrator

08/02/06
Signature Date

/s/ Edward Allan Hindman
Edward Allan Hindman
Non-Public Arbitrator

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NASD Dispute Resolution
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Award Page 5 of 5

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Peter J. Broullire, III, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

James Mark Eason
Public Arbitrator

Signature Date

Edward Allan Hindman
Edward Allan Hindman
Non-Public Arbitrator

July 18, 2006
Signature Date

Date of Service (For NASD Dispute Resolution use only)