

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

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In the Matter of the Arbitration Between:

Names of the Claimants

Cynthia Waller-Booker  
Yvette Waller-Barnes

Case Number: 04-07428

Names of the Respondents

First Union Capital Markets Corporation  
Wachovia Securities, LLC  
Harry L. Davis

Hearing Site: Washington, D.C.

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

REPRESENTATION OF PARTIES

Claimants, Cynthia Waller-Booker ("Waller-Booker") and Yvette Waller-Barnes ("Waller-Barnes"), hereinafter collectively referred to as "Claimants", were represented by Katherine T. Wallace, Esq., Law Office of Katherine T. Wallace, Alexandria, Virginia.

Respondents, First Union Capital Markets Corporation, Wachovia Securities, LLC ("Wachovia"), and Harry L. Davis ("Davis"), hereinafter collectively referred to as "Respondents", were represented by Todd Ratner, Esq., Wachovia Securities, LLC, Richmond, Virginia.

CASE INFORMATION

Statement of Claim filed on or about October 20, 2004.

Claimant Waller-Booker signed the Uniform Submission Agreement on October 18, 2004.

Claimant Waller-Barnes signed the Uniform Submission Agreement on September 16, 2004.

Statement of Answer and Motion to Dismiss filed by Respondents Wachovia and Davis on January 27, 2005.

Respondent Davis signed the Uniform Submission Agreement on February 1, 2005.

A representative of Respondent Wachovia executed the Uniform Submission Agreement on January 27, 2005.

Claimants filed an Opposition to the Motion to Dismiss on February 28, 2005.

Respondents filed a Reply in Support of the Motion to Dismiss on March 17, 2005.

CASE SUMMARY

Claimants asserted the following causes of action, among others: breach of contract, breach of fiduciary duty, negligence, and failure to supervise. The causes of action relate to the disbursement of funds from the account of which Claimants had been joint tenants with their late

father.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: the Statement of Claim fails to state a claim upon which relief may be granted; the claim is barred by the doctrines of laches, unclean hands, and estoppel; contributory negligence; Claimants, by their actions and inactions, waived the right to pursue any claim; and statutes of limitations.

#### RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$575,000.00
Punitive Damages	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Claimants also requested interest at 3% compounded annually.

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed in its entirety and that all costs of this Arbitration be borne by Claimants.

#### OTHER ISSUES CONSIDERED AND DECIDED

On June 1, 2005, during a telephonic pre-hearing conference, the Panel heard arguments on Respondents' Motion to Dismiss. After due deliberation the Panel granted the Motion to Dismiss with prejudice.

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 and hearing argument Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is dismissed with prejudice in its entirety;
2. All claims for punitive damages and attorneys' fees are denied in their entirety;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein is denied in its entirety.

EEES

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 = \$ 375.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Wachovia is a party.

Member surcharge = \$2,250.00

Pre-hearing process fee = \$ 750.00

Total Member Fees = \$3,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 = \$2,400.00

Pre-hearing conferences: May 2, 2005 1 session

June 1, 2005 1 session

Total Forum Fees = \$2,400.00

1. The Panel has assessed \$1,200.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$1,200.00 of the forum fees jointly and severally to Respondents Wachovia and Davis.

EEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee = \$ 375.00

Forum Fees = \$1,200.00

Total Fees = \$1,575.00

Less payments = \$1,575.00

Balance Due NASD Dispute Resolution = \$ 00.00

2. Respondent Wachovia is assessed and shall pay the following fees:

Member Fees = \$3,000.00

Total Fees = \$3,000.00

Less payments = \$3,000.00

Balance Due NASD Dispute Resolution = \$ 00.00

4. Respondents Wachovia and Davis are jointly and severally assessed and shall pay the following fees:

Forum Fees = \$1,200.00

Total Fees	= \$1,200.00
<u>Less payments</u>	<u>= \$ 00.00</u>
Balance Due NASD Dispute Resolution	= \$1,200.00

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

ARBITRATION PANEL

Albert D. Sturtevant, Esq.	-	Public Arbitrator, Presiding Chairperson
Barry E. Shapiro	-	Public Arbitrator, Panelist
Bonnie K. Wachtel, Esq.	-	Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures



Albert D. Sturtevant, Esq.  
Public Arbitrator, Presiding Chairperson

6/6/05

Signature Date

\_\_\_\_\_  
Barry E. Shapiro  
Public Arbitrator, Panelist

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Bonnie K. Wachtel, Esq.  
Non-Public Arbitrator, Panelist

\_\_\_\_\_  
Signature Date

06/08/05

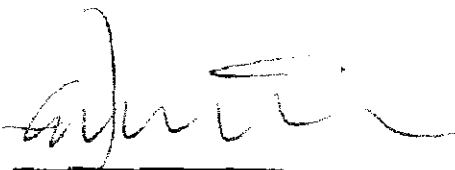
Date of Service (For NASD Dispute Resolution office use only)

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Albert D. Sturtevant, Esq  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date



\_\_\_\_\_  
Barry E. Shapiro  
Public Arbitrator, Panelist

JUNE 3, 2005

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Bonnie K. Wachtel, Esq.  
Non-Public Arbitrator, Panelist

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Non-Public Arbitrator, Panelist

6-7-05  
Signature Date

06/08/05  
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