

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Wendy Niemann

and

Case Number: 04-07446

Hearing Site: Milwaukee, Wisconsin

Name of Respondent

John W. Busey, II

NATURE OF DISPUTE

Customer v. Associate Person

REPRESENTATION OF PARTIES

Wendy Niemann ("Claimant") was represented by Sean Lanphier, Esq., Mallery & Zimmerman, SC, Milwaukee, Wisconsin.

John W. Busey, II ("Respondent") was represented by Andrew S. May, Esq., The Law Offices of Andrew May, Evanston, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about October 25, 2004. The Submission Agreement of Claimant, Wendy Niemann, was signed on or about October 5, 2004.

The Statement of Answer was filed by Respondent, John W. Busey, II, on or about December 16, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, breach of fiduciary duty, unauthorized trading, churning and negligence. The causes of action related to recommendation and purchase of various unspecified securities. Claimant alleged that Respondent traded stocks in her account without discussing the trades or obtaining authorization to make the trades, as if it was a discretionary account. Claimant also alleged that the investments were unsuitable for her investment objective, which was retirement.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant's claims are barred by the applicable statutes of limitations; Claimant failed to mitigate her damages; and Claimant ratified all trades in her account.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Punitive Damages	\$46,000.00
Punitive/Exemplary Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	UNspecified

Respondent requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, John W. Busey, II, did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, *appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.*

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, John W. Busey, II, is liable for and shall pay to Claimant, Wendy Niemann, the sum of \$5,000.00 in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each

bear their own costs and expenses incurred in this matter; and

- 3.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 175.00

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 person at the time of the events giving rise to the dispute. In this matter, the member firm is Wachovia Securities, LLC

Member surcharge = \$ 875.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 1,000.00

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 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 Panel x \$450.00	= \$ 450.00
Pre-hearing conference: March 28, 2005	1 session
Four (4) Hearing sessions x \$450.00	= \$ 1,800.00
Hearing Dates: November 2, 2005	2 sessions
January 16, 2006	2 sessions
Total Forum Fees	= \$ 2,250.00

The Arbitration Panel has assessed \$1,125.00 of the forum fees to Wendy Niemann.

The Arbitration Panel has assessed \$1,125.00 of the forum fees to John W. Busey, II.

Fee Summary

Claimant, Wendy Niemann, is liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,300.00
Less payments	= \$ 625.00
Balance Due NASD Dispute Resolution	= \$ 675.00

Respondent, Wachovia Securities, LLC, is liable for:

Member Fees	= \$ 2,625.00
Total Fees	= \$ 2,625.00
Less payments	= \$ 2,625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, John W. Busey, II, liable for:

Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,125.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

ARBITRATOR

Lawrence Tepper, CPA - Public Arbitrator, Presiding Chair

Concurring Arbitrators:

/s/ Lawrence Tepper, CPA
Lawrence Tepper, CPA
Public Arbitrator, Presiding Chair

January 20, 2006
Signature Date

January 20, 2006
Date of Service (For NASD office use only)

ARBITRATOR

Lawrence Tepper, CPA - Public Arbitrator, Presiding Chair

Concurring Arbitrators:

Lawrence Tepper
Lawrence Tepper, CPA
Public Arbitrator, Presiding Chair

1/20/2006
Signature Date

Date of Service (For NASD office use only)