

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

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In the Matter of the Arbitration Between:

Frank D. Fauci (Claimant) v. Wachovia Securities, LLC (Respondent)

Case Number: 04-08051

Hearing Site: Newark, New Jersey

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Nature of the Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

Claimant Frank D. Fauci, hereinafter referred to as "Claimant": Stuart Schlem and Benjamin Lapin, Stock Market Recovery Consultants, Inc., Brooklyn, NY.

Respondent Wachovia Securities, LLC, hereinafter referred to as "Respondent": Demian J. Betz, Esq., Wachovia Securities, LLC, Richmond, VA.

**CASE INFORMATION**

Statement of Claim filed on or about: November 17, 2004.

Claimant signed the Uniform Submission Agreement: October 30, 2004.

Statement of Answer filed by Respondent on or about: January 13, 2005.

Respondent did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: misrepresentation and excessive and unnecessary trading. The causes of action relate to the common stock in the following companies: Charter Communications, Quest Communications, Cendant, Tyco, Scudder Technology, AT&T, AT&T Wireless, WorldCom, and Peregrine. The causes of action also relate to the following mutual funds: Munder Internet Fund, Van Kempen Biotech and Pharmaceutical Fund, Kemper Technology Class B, and Van Kempen Telecom Fund.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$100,000.00; return of

commissions; applicable interest fees; and punitive damages to be determined by the Panel; as well as any other appropriate relief.

Respondent requested that the Panel deny Claimant's claims, dismiss the Statement of Claim, and award any other relief as is just.

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

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On September 20, 2005, Claimant renewed his Motion to Reschedule the hearing. The Claimant was not present at the hearing and the Claimant's representative indicated that he was unprepared to proceed with the hearing. After due deliberation, the Panel denied the Motion and ordered that the hearing would proceed on September 21, 2005.

At the hearing in this matter, Respondent filed a Motion for Sanctions and a Motion for Summary Judgment. The Panel, after due deliberation, deferred decision on the Motions with the award decision reflecting the disposition of the motions.

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, 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. Claimant's claims are denied in their entirety.
2. Claimant is liable for and shall pay to Respondent costs in the amount of \$218.00.
3. 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 | = \$ 225.00 |
|--------------------------|-------------|

### **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. Accordingly, Wachovia Securities, LLC is a party.

|                            |               |
|----------------------------|---------------|
| Member surcharge           | = \$ 1,100.00 |
| Pre-hearing process fee    | = \$ 750.00   |
| <u>Hearing process fee</u> | = \$ 1,700.00 |
| Total Member Fees          | = \$ 3,550.00 |

### **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:

|   |               |
|---|---------------|
| One (1) Pre-hearing session with a single arbitrator @ \$450.00 | = \$ 450.00   |
| Pre-hearing conference: July 21, 2005 1 session                 |               |
| One (1) Pre-hearing session with Panel @ \$750.00               | = \$ 750.00   |
| Pre-hearing conference: March 29, 2005 1 session                |               |
| Five (5) Hearing sessions @ \$750.00 per session                | = \$ 3,750.00 |
| Hearing Dates: September 20, 2005 1 session                     |               |
| September 21, 2005 2 sessions                                   |               |
| September 22, 2005 2 sessions                                   |               |
| Total Forum Fees  | = \$ 4,950.00 |

1. The Panel has assessed \$2,850.00 of the forum fees to Claimant.
2. The Panel has assessed \$2,100.00 of the forum fees to Respondent.

### **Fee Summary**

1. Claimant is solely liable for:

|                                     |               |
|-------------------------------------|---------------|
| Initial Filing Fee                  | = \$ 225.00   |
| Forum Fees                          | = \$ 2,850.00 |
| Total Fees                          | = \$ 3,075.00 |
| <u>Less payments</u>                | = \$ 975.00   |
| Balance Due NASD Dispute Resolution | = \$ 2,100.00 |

2. Respondent is solely liable for:

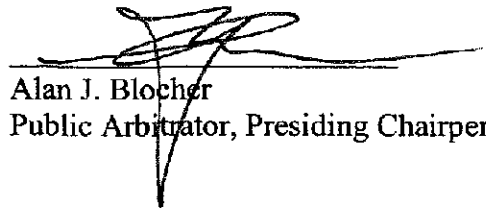
|                                     |               |
|-------------------------------------|---------------|
| Member Fees                         | = \$ 3,550.00 |
| Forum Fees                          | = \$ 2,100.00 |
| Total Fees                          | = \$ 5,650.00 |
| <u>Less payments</u>                | = \$ 3,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 2,100.00 |

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

**ARBITRATION PANEL**

|                     |   |  |
|---------------------|---|--|
| Alan J. Blocher     | - | Public Arbitrator, Presiding Chairperson |
| Richard H. Hoenig   | - | Public Arbitrator                        |
| John W. Thomas, Jr. | - | Non-Public Arbitrator                    |

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Alan J. Blocher  
Public Arbitrator, Presiding Chairperson

9/29/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Richard H. Hoenig  
Public Arbitrator

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

\_\_\_\_\_  
John W. Thomas, Jr.  
Non-Public Arbitrator

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

October 6, 2005  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
John W. Thomas, Jr.  
Non-Public Arbitrator

29 Sep 2005  
Signature Date

October 6, 2005  
Date of Service (For NASD Dispute Resolution use only)