

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Wachovia Securities, LLC

Case Number: 04-08428

Name of the Respondent

Alan Gomelsky

Hearing Site:

Philadelphia, Pennsylvania

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Nature of the Dispute: Member vs. Associated Person.

**REPRESENTATION OF PARTIES**

Claimant, Wachovia Securities, LLC, hereinafter referred to as "Claimant", was represented by Jonathan E. Levine, Esq., Law Offices of Daniel S. Fiore, Arlington, Virginia.

Respondent, Alan Gomelsky, hereinafter referred to as "Respondent", was represented by Michael Rosenthal, Esq., Attorney at Law, Philadelphia, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on December 10, 2004.

A representative of Claimant signed the Uniform Submission Agreement on October 28, 2004.

Statement of Answer and Counterclaim filed by Respondent on February 1, 2005.

Respondent signed the Uniform Submission Agreement on January 31, 2005.

Statement of Answer to Respondent's Counterclaim filed by Claimant on February 15, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: breach of promissory note and unjust enrichment. The causes of action relate to Respondent's employment with and resignation from Claimant.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to act in good faith, fraud, and misrepresentation.

Respondent asserted the following cause of action, among others, in his Counterclaim: breach of contract, violation of the Pennsylvania Wage Payment and Collection Law, breach of good faith and fair dealing, fraud, and unjust enrichment. The causes of action relate to Respondent's employment with and resignation from Claimant.

Unless specifically admitted in its Answer, Claimant denied the allegation made in the Counterclaim and asserted the following defenses, among others: failure to state a claim upon

which relief can be granted; breach of contract; lack of malice and intent to cause harm; and Claimant's claims are barred by a lack of consideration, the statute of frauds, and the doctrines of estoppel and/or accord and satisfaction.

RELIEF REQUESTED

Claimant in its Statement of Claim requested:

Compensatory Damages	\$ 66,274.16
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent in his Statement of Answer requested that Claimant's Statement of Claim be dismissed and that he be awarded costs and attorneys' fees.

Respondent in his Counterclaim also requested:

Compensatory Damages	\$ 81,875.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified
Specific Performance	disbursement of brokerage accounts

Claimant in its Answer to Respondent's Counterclaim requested that the Counterclaim be dismissed with prejudice and that it be awarded all costs and expenses.

OTHER ISSUES CONSIDERED AND DECIDED

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. On the initial Claim, Respondent is liable to and shall pay to Claimant compensatory damages in the amount of \$45,563.00;
2. On the Counterclaim, Claimant is liable to and shall pay to Respondent compensatory damages of \$66,274.00;
3. The Panel grants Respondent's request for Specific Performance. Claimant shall release Respondent's lien and brokerage account and is liable and shall pay to Respondent his last month's commission in the amount of \$5,700.00.

4. All claims for punitive damages and attorneys' fees are denied in their entirety;
5. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
6. Any and all relief not specifically addressed herein is denied in its entirety.

#### 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	= \$ 1,000.00
Counter 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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Claimant is a party.

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

##### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 18, 19, and 20, 2005 adjournment by Claimant = \$ 750.00

1. The Panel has assessed \$375.00 of the adjournment fees to Claimant.
2. The Panel has assessed \$375.00 of the adjournment fees to Respondent.

##### Forum Fees and Assessments

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

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: August 2, 2005 1 session	

Two (2) Pre-hearing sessions with Panel @ \$750.00	= \$ 1,500.00
Pre-hearing conferences: May 16, 2005 1 session	
October 14, 2005 1 session	

Four (4) Hearing sessions @ \$750.00	= \$ 3,000.00
Hearing Dates: November 15, 2005 2 sessions	
November 16, 2005 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 4,950.00

1. The Panel has assessed \$2,475.00 of the forum fees to Claimant.
2. The Panel has assessed \$2,475.00 of the forum fees to Respondent.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:	
Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,550.00
Adjournment Fee	= \$ 375.00
Forum Fees	= \$ 2,475.00
Total Fees	= \$ 7,400.00
Less payments	= \$ 5,300.00
Balance Due NASD Dispute Resolution	= \$ 2,100.00
2. Respondent is assessed and shall pay the following fees:	
Initial Filing Fee	= \$ 225.00
Adjournment Fee	= \$ 375.00
Forum Fees	= \$ 2,475.00
Total Fees	= \$ 3,075.00
Less payments	= \$ 975.00
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.

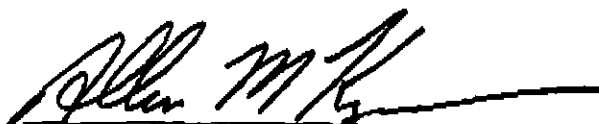
ARBITRATION PANEL

Thomas Maloney	-	Public Arbitrator, Presiding Chairperson
Allen M. Kerpan	-	Public Arbitrator, Panelist
Clifford A. Hardwick	-	Non-Public Arbitrator, Panelist

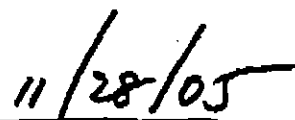
Concurring Arbitrators Signatures

Thomas Maloney  
Public Arbitrator, Presiding Chairperson

Signature Date



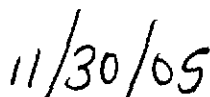
Allen M. Kerpan  
Public Arbitrator, Panelist



Signature Date

Clifford A. Hardwick  
Non-Public Arbitrator, Panelist

Signature Date



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

Concurring Arbitrators' Signatures

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Thomas Maloney  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Allen M. Kerpan  
Public Arbitrator, Panelist

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



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Clifford A. Hardwick  
Non-Public Arbitrator, Panelist

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Signature Date

11/30/05

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