

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kevin Flannery, Claimant v. Wachovia Securities, LLC and Douglas J. Wride, Respondents

Case Number: 04-08571

Hearing Site: Salt Lake City, Utah

Nature of the Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Robert K. Rothfeder, Esq.
Winder & Haslam
Salt Lake City, Utah

For Respondent Wachovia Securities LLC:

William Mark, Esq.
Michael J. Abbott, Esq.
Robert J. Girard, II, Esq.
Jones, Bell, Abbott, Fleming
& Fitzgerald
Los Angeles, California

For Respondent Douglas J. Wride:

John T. Caine, Esq.
Richards, Caine & Allen, P.C.
Ogden, Utah

CASE INFORMATION

Statement of Claim filed: December 21, 2004

Claimant's Uniform Submission Agreement signed: April 5, 2005

Statement of Answer filed by Respondent Wachovia Securities, LLC: July 27, 2005

Respondent Wachovia Securities, LLC's Uniform Submission Agreement signed: July 27, 2005

Respondent Douglas J. Wride's Uniform Submission Agreement: None submitted.

CASE SUMMARY

Claimant alleged violations of the Utah Securities Act and Utah Administrative Code § R164, violations of NASD Rules, common law fraud, negligent misrepresentation, breach of contract, breach of fiduciary duty, breach of covenant of good faith and fair dealing, negligence, control party liability, respondeat superior and civil conspiracy. Claimant's allegations involved transactions in his margin accounts.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested unspecified compensatory damages, unspecified punitive damages, treble damages, pre- and post-judgment interest at a rate of 12% per annum, and costs, including attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 29, 2005, Claimant informed the Panel the he had settled his dispute with Respondent Douglas J. Wride and that that all claims against Respondent Douglas J. Wride have been dismissed.

During the hearing, Respondent moved the Panel for an Order Dismissing the Statement of Claim on the ground that Claimant Kevin Flannery was not the real party in interest and therefore lacked standing to make a claim for damages. After due deliberation in an executive session, the Panel denied the Motion to Dismiss.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable to and shall pay Claimant the sum of \$233,250.00 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimant interest at a rate of 5% per annum on the sum of \$233,250.00 from the date of service of this award until the award is paid in full.
- 3) Claimant's claims for punitive damages and treble damages are denied.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 250.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Wachovia Securities, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,200.00
Total Member Fees	= \$ 4,450.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,000.00/session	= \$1,000.00
Pre-hearing conference: October 3, 2005 1 session	
(8) Hearing sessions @ \$1,000.00/session	= \$8,000.00
Hearings: April 10, 2006 2 sessions	
April 11, 2006 2 sessions	
April 12, 2006 3 sessions	
April 13, 2006 1 session	
Total Forum Fees	= \$9,000.00

1. The Panel assessed \$4,500.00 of the forum fees to Claimant.
2. The Panel assessed \$4,500.00 of the forum fees to Respondent Wachovia Securities, LLC.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 4,500.00
Total Fees	= \$ 4,750.00
<u>Less payments</u>	<u>= \$(1,250.00)</u>
Balance Due NASD Dispute Resolution	= \$ 3,500.00
2. Respondent Wachovia Securities, LLC is charged with the following fees and costs:

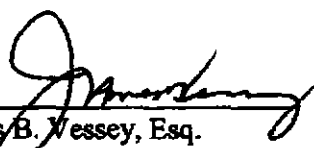
Member Fees	= \$ 4,450.00
Forum Fees	= \$ 4,500.00
Total Fees	= \$ 8,950.00
<u>Less payments</u>	<u>= \$(4,450.00)</u>
Balance Due NASD Dispute Resolution	= \$ 4,500.00

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

ARBITRATION PANEL

James B. Vessey, Esq.	-	Public Arbitrator, Presiding Chair
Kevin D. Swenson, J.D	-	Public Arbitrator
James D. Searles	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



James B. Vessey, Esq.
Chair, Public Arbitrator



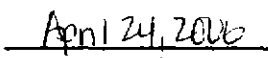
Signature Date

Kevin D. Swenson, J.D
Public Arbitrator

Signature Date

James D. Searles
Non-Public Arbitrator

Signature Date



Date of Service

ARBITRATION PANEL

James B. Vessey, Esq.	-	Public Arbitrator, Presiding Chair
Kevin D. Swenson, J.D	-	Public Arbitrator
James D. Searles	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

James B. Vessey, Esq.
Chair, Public Arbitrator

Signature Date



Kevin D. Swenson, J.D
Public Arbitrator

4-24-06
Signature Date

James D. Searles
Non-Public Arbitrator

Signature Date

April 24, 2006
Date of Service