

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

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In the Matter of the Arbitration Between:

James Newton (Claimant) v. Paul Cromey and Wachovia Securities, LLC, Successor in Interest to First Union Securities (Respondents)

Case Number: 05-00115

Hearing Site: Buffalo, New York

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

**REPRESENTATION OF PARTIES**

Claimant James Newton hereinafter referred to as "Claimant": Erika N.D. Stanat, Esq., Harter Secrest & Emery, LLP, Rochester, NY.

Respondents Paul Cromey ("Cromey") and Wachovia Securities, LLC, Successor in Interest to First Union Securities ("Wachovia") hereinafter collectively referred to as "Respondents":  
Demian J. Betz, Esq., Wachovia Securities, LLC, Richmond, VA.

**CASE INFORMATION**

Statement of Claim filed on or about: January 7, 2005.

Claimant signed the Uniform Submission Agreement: January 4, 2005.

Statement of Answer filed by Respondents on or about: March 2, 2005.

Respondent Cromey signed the Uniform Submission Agreement: April 4, 2005.

Respondent Wachovia signed the Uniform Submission Agreement: March 2, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: suitability; failure to supervise; violations of the Securities Exchange Act of 1934; and breach of fiduciary duty and duty of care. The causes of action relate to unspecified stock funds and high yield funds.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$135,000.00; raw loss total of approximately \$76,500.00; and market-adjusted damages resulting from Respondent Cromey's

failure to invest Mr. Newton's assets in an appropriate mix of high quality growth and income funds in the amount of approximately \$96,000.00.

Respondents requested that the Panel deny Claimant's claims; dismiss the Statement of Claim; and award any other relief as is just, including expungement of this matter from Respondent Cromey's Central Registration Depository Records.

### **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. Claimant's claims are denied and dismissed in their entirety.
2. Respondent Cromey's request for expungement is denied.
3. Any and all relief not specifically addressed herein 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	= \$ 300.00
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#### **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	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00/session	= \$ 2,250.00
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Pre-hearing conferences:      May 31, 2005              1 session  
   July 26, 2005              1 session

Four (4) Hearing sessions @ \$1,125.00                              = \$ 4,500.00

Hearing Dates:              August 30, 2005              2 sessions  
   August 31, 2005              2 sessions

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Total Forum Fees    = \$ 6,750.00

1. The Panel has assessed \$1,687.50 the forum fees against Claimant.
2. The Panel has assessed \$5,062.50 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 1,687.50
Total Fees	= \$ 1,987.50
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 562.50

2. Respondent Wachovia is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
Total Fees	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Wachovia and Cromey are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 5,062.50
Total Fees	= \$ 5,062.50
<u>Less Payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,062.50

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

ARBITRATION PANEL

Ralph L. Halpern, Esq.	-	Public Arbitrator, Presiding Chairperson
Allan H. Kaminsky	-	Public Arbitrator
Richard A. Scalfani	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Ralph L. Halpern, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Allan H. Kaminsky  
Public Arbitrator

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

Richard A. Scalfani  
Richard A. Scalfani  
Non-Public Arbitrator

September 12, 2005  
Signature Date

Sept 13, 2005  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Ralph L. Halpern, Esq.	-	Public Arbitrator, Presiding Chairperson
Allan H. Kaminsky	-	Public Arbitrator
Richard A. Scalfani	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Ralph L. Halpern, Esq.  
Public Arbitrator, Presiding Chairperson

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

Allan H. Kaminsky  
Allan H. Kaminsky  
Public Arbitrator

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

\_\_\_\_\_  
Richard A. Scalfani  
Non-Public Arbitrator

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

Sept 13, 2005  
Date of Service (For NASD Dispute Resolution use only)