

**Award
NASD Dispute Resolution**

COPY

In the Matter of the Arbitration Between:

Martha J. Dudek, Claimant v. First Union Securities, Inc. n/k/a Wachovia Securities, LLC, Daniel D. Oberst, and Todd Williams, Respondents

Case Number: 05-00132

Hearing Site: Las Vegas, Nevada

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

REPRESENTATION OF PARTIES

For Claimant:

Neil J. Beller, Esq.
Law Offices of Neil J.
Beller
Las Vegas, Nevada

For Respondents Wachovia Securities, LLC and
Todd Williams:

Ashley Young Adams
Keesal Young & Logan
Long Beach, California

For Respondent Daniel D. Oberst:

Daniel D. Oberst
Pro Se
Henderson, Nevada

CASE INFORMATION

Statement of Claim filed: January 7, 2005

Claimant's Uniform Submission Agreement signed but not dated

Joint Statement of Answer filed by Respondents First Union Securities, Inc. n/k/a Wachovia Securities, LLC (hereinafter "Wachovia Securities, LLC") and Todd Williams: April 11, 2005

Respondent Wachovia Securities, LLC's Uniform Submission Agreement signed but not dated

Respondent Todd Williams' Uniform Submission Agreement signed: April 21, 2005

CASE SUMMARY

Claimant asserted the following causes of action: fraud, breach of fiduciary duty, omissions and misrepresentations, negligence, violation of Nevada Revised Statutes 90.570, 90.660, 598.092 et seq. (deceptive trade practices), 41.1395 (exploitation of an older or vulnerable person), respondeat superior, agency, and control person liability. The causes of action concern Respondents' alleged inappropriate investment of Claimant's disability settlement proceeds in an annuity and in Janus mutual funds.

Unless specifically admitted in their Answer, Respondents Wachovia Securities, LLC and Todd Williams denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$300,000.00 in compensatory damages, unspecified consequential damages, unspecified punitive damages, disgorgement and restitution, treble damages, pre- and post-judgment interest, and costs, including attorney's fees.

Respondents Wachovia Securities, LLC and Todd Williams requested dismissal of Claimant's Statement of Claim in its entirety, expungement of all references to this matter from Todd Williams' CRD records, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Daniel D. Oberst did not file with NASD Dispute Resolution a properly executed submission agreement, but he is required to submit to arbitration pursuant to NASD's Code of Arbitration Procedure, and he is bound by the determination of the Panel on all issues submitted.

On January 28, 2005, NASD sent Respondent Daniel D. Oberst a copy of the Statement of Claim and a letter notifying him of his March 21, 2005 Answer due date. These documents were sent to Respondent Oberst via certified mail, return receipt requested. On February 15, 2005, the documents were returned to NASD by the US postal service with the notation that delivery had been "attempted, not known." On February 16, 2005, NASD sent a letter to Claimant advising her that NASD had been unable to perfect service on Respondent Oberst and asking her to provide NASD with an alternate address for Respondent Oberst. NASD subsequently sent to all parties a list of possible arbitrators who might hear the case so that the parties might rank the arbitrators in order of preference (April 11, 2005), notice of the arbitration panel's composition and of the initial pre-hearing conference date (May 13, 2005), and the scheduling order that was issued in this matter, which included the March 2006 hearing dates (June 24, 2005). None of these documents were returned to NASD by the US

postal service.

On January 23, 2006, Claimant provided NASD with another address at which Respondent Oberst could be served. On February 1, 2006, Claimant advised NASD in writing that Respondent Oberst had been served with the claim and inquired what effect this service might have on the March 2006 hearing dates. On February 7, 2006, Claimant provided NASD with a February 6, 2006 Affidavit of Service of the claim upon Respondent Oberst by Claimant's process server. Respondents were provided with an opportunity to respond to Claimant's letters, but no response was received by NASD. Accordingly, Claimant's inquiry and the Affidavit of Service were forwarded to the Panel. On February 17, 2006, the Panel issued an Order stating that Claimant's Affidavit of Service demonstrated valid service on Respondent Oberst and that Oberst must submit an Answer to the Statement of Claim within seven days of the Order.

On February 23, 2006, Respondents Wachovia Securities, LLC and Todd Williams sent a letter to NASD stating that the arbitration Panel does not have jurisdiction over Respondent Oberst. On February 24, 2006, Claimant sent a letter to NASD stating that the Panel does have jurisdiction over Respondent Oberst and requesting that the Panel sign Claimant's proposed Order of Appearance directed to Respondent Oberst. On February 27, 2006, Respondents Wachovia Securities, LLC and Todd Williams submitted a response to Claimant's February 24, 2006 letter. On February 27, 2006, the Panel heard oral argument from the parties regarding the issue of the Panel's jurisdiction over Respondent Oberst and his participation at the hearing. All parties, including Respondent Oberst, participated in this conference call. The Panel ruled orally that it had jurisdiction over Respondent Oberst and that the matter would proceed to hearing on March 7, 2006.

On March 3, 2006, NASD was notified in writing that Claimant had resolved her claims against Respondents Wachovia Securities, LLC and Todd Williams. The hearing in this matter commenced on March 7, 2006 and was limited to Claimant's claims against Respondent Oberst. Respondent Oberst did not appear at the hearing. Upon review of the file and the representations made on behalf of Claimant, the undersigned Panel determined that Respondent Daniel Oberst was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with NASD's Code of Arbitration Procedure (the "Code").

On March 7, 2006, Respondent Todd Williams submitted a request for a hearing regarding expungement of this matter from his CRD records. On March 20, 2006, Respondents Wachovia Securities, LLC and Todd Williams filed a Motion Requesting the Panel Recommend Expungement of Matter from the CRD Record of Todd Williams. On March 22, 2006, Claimant filed a Notice of Non-Opposition to Expungement of CRD Record of Todd Williams. On May 23, 2006, Respondent Williams and his counsel

participated in a telephonic hearing with the Panel regarding the issue of expungement. The Panel received exhibits that had been filed by Respondent Williams' counsel during the course of the hearing. After due deliberation, the Panel decided to deny Respondent Williams' request for expungement.

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 in person hearing and the telephonic hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Daniel D. Oberst is liable to and shall pay Claimant Martha J. Dudek the sum of \$81,000.00 in compensatory damages pursuant to the Nevada Securities Act.
- 2) Respondent Daniel D. Oberst is liable to and shall pay Claimant the sum of \$13,000.00 as reimbursement for expert witness fees and photocopying costs pursuant to the Nevada Securities Act.
- 3) Respondent Daniel D. Oberst is liable to and shall pay Claimant the sum of \$36,000.00 in attorney's fees, pursuant to the Nevada Securities Act.
- 4) Respondent Daniel D. Oberst is liable to and shall pay Claimant interest in the amount of 4% per annum on \$81,000.00 from May 30, 2000 until payment of this Award is made in full.
- 5) Respondent Todd Williams' request for expungement is denied.
- 6) 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 received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 375.00
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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	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$4,000.00
Total Member Fees	= \$7,000.00

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. The following forum fees are assessed:

Two (2) pre-hearing conference sessions with the Panel @ \$1,200.00/session		= \$ 2,400.00
Pre-hearing conferences:	June 13, 2005	1 session
	February 27, 2006	1 session
Two (2) hearing sessions @ \$1,200.00/session		= \$ 2,400.00
Hearings:	March 7, 2006	1 session
	May 23, 2006	1 session
Total Forum Fees		= \$4,800.00

1. The Panel assessed \$600.00 of the forum fees to Claimant.
2. The Panel assessed \$2,400.00 of the forum fees to Respondent Daniel D. Oberst.
3. The Panel assessed \$1,200.00 of the forum fees to Respondent Todd Williams.

4. The Panel assessed \$600.00 of the forum fees jointly and severally to Respondent Wachovia Securities, LLC, Respondent Todd Williams, and Respondent Daniel D. Oberst.

Fee Summary

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

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 975.00
Less payments	= \$(1,575.00)
Refund Due Claimant	= \$ (600.00)

2. Respondent Wachovia Securities, LLC is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Less payments	= \$(7,000.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Wachovia Securities, LLC, Todd Williams, and Daniel D. Oberst are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 600.00
Less Payments by Wachovia Securities, LLC	= \$ (750.00)
Refund Due Respondent Wachovia Securities, LLC	= \$ (150.00)

4. Respondent Daniel D. Oberst is charged with the following fees and costs:

Forum Fees	= \$ 2,400.00
Forum Fees	= \$ 2,400.00

5. Respondent Todd Williams is charged with the following fees and costs:

Forum Fees	= \$1,200.00
Forum Fees	= \$1,200.00

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

Barbara L. Edin	-	Public Arbitrator, Presiding Chair
R. Peter Faris	-	Public Arbitrator
Dean C. Abraham	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Barbara L. Edin
Chair, Public Arbitrator

5/25/06
Signature Date

R. Peter Faris
Public Arbitrator

Signature Date

Dean C. Abraham
Non-Public Arbitrator

Signature Date

5/26/06
Date of Service

ARBITRATION PANEL

Barbara L. Edin	-	Public Arbitrator, Presiding Chair
R. Peter Faris	-	Public Arbitrator
Dean C. Abraham	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Barbara L. Edin
Chair, Public Arbitrator



R. Peter Faris
Public Arbitrator

Signature Date

5/23/06

Signature Date

Dean C. Abraham
Non-Public Arbitrator

Signature Date

5/26/06

Date of Service

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Concurring Arbitrators' Signatures

Barbara L. Edin
Chair, Public Arbitrator

Signature Date

R. Peter Faris
Public Arbitrator

Signature Date



Dean C. Abraham
Non-Public Arbitrator

Signature Date

5.25.06
Signature Date

5/26/06
Date of Service