

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Wachovia Securities, LLC (Claimant) v. Jay I. Austin (Respondent)

Case Number: 05-00396

Hearing Site: Newark, New Jersey

Nature of the Dispute: Member vs. Associated Person

REPRESENTATION OF PARTIES

Claimant Wachovia Securities, LLC hereinafter referred to as "Claimant": John E. MacDonald, Esq., Stark & Stark, Princeton, NJ.

Respondent Jay I. Austin hereinafter referred to as "Respondent": Jerome M. Selvers, Esq., Sonnenblick, Parker & Selvers, Freehold, NJ. Previously represented by Chad N. Cagan, Esq., Sonnenblick, Parker & Selvers, Freehold, NJ.

CASE INFORMATION

Statement of Claim filed on or about: January 20, 2005.
Claimant signed the Uniform Submission Agreement: December 15, 2004.
Reply to the Counterclaim filed on or about: June 1, 2005.

Statement of Answer and Counterclaim filed by Respondent on or about: May18, 2005.
Respondent signed the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: Promissory Note.

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

In his Counterclaim, Respondent asserted the following causes of action: breach of contract, breach of implied covenant of good faith and fair dealing, constructive termination, fraud, and negligent misrepresentation.

Unless specifically admitted in its Reply to Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$196,542.25 that remains due and owing on the principal of the Promissory Note, interest at the rate of seven (7%) per annum (pursuant to the terms of Promissory Note) on the entire amount due, costs including filing and other fees imposed by NASD, attorneys' fees and such further relief as the arbitration panel deems just and proper.

Respondent requested dismissal of the Statement of Claim with prejudice, attorneys' fees, costs and such other relief as the Arbitration Panel deem equitable, just and deems necessary.

In his Counterclaim, Respondent requested an unspecified amount of compensatory damages, punitive damages, attorneys' fees and costs and such other relief as the Arbitration Panel may deem equitable, just and necessary.

In its Reply to the Counterclaim, Claimant requested judgment against Respondent on the Counterclaim, attorneys' fees and costs and such other further relief as the Arbitration Panel deems equitable.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Claimant made a request for certification of attorneys' fees. After due deliberation the Panel denied the request.

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 compensatory damages in the amount of \$259,122.00, plus interest at a rate of 6% per annum from July 1, 2004 to date of payment of the award.

Because of extreme duress, Respondent was forced to sign the amendment to his original employment agreement dated June 16, 2006. We void the amended agreement and hold Wachovia to the terms of the original employment agreement. Thus, if the first agreement had been honored, it would have resulted in additional monies paid and forgiven resulting in damages of \$259,122.00.

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	= \$1,000.00
Counterclaim filing fee	= \$ 250.00

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 event giving rise to the dispute. Accordingly, Wachovia Securities, LLC is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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) Decision on discovery-related motion on the papers with single arbitrator @ \$200.00 = \$ 200.00

Respondent submitted one (1) discovery-related motion

One (1) Pre-hearing session with single arbitrator @ 450.00/session = \$ 450.00
Pre-hearing conference: March 15, 2006 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,125.00/session = \$ 2,250.00
Pre-hearing conferences: August 15, 2005 1 session
March 23, 2006 1 session

Six (6) Hearing sessions with Panel @ \$1,125.00/session = \$ 6,750.00
Hearing Dates:

June 1, 2006	2 sessions
August 8, 2006	2 sessions
August 9, 2006	2 sessions

Total Forum Fees = \$ 9,650.00

1. The Panel has assessed \$4,825.00 of the forum fees to Claimant.
2. The Panel has assessed \$4,825.00 of the forum fees to Respondent.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 4,825.00
Total Fees	= \$ 11,025.00
Less payments	= \$ 7,325.00
Balance Due NASD Dispute Resolution	= \$ 3,700.00

2. Respondent is solely liable for:


Counterclaim Filing Fee	= \$ 250.00
Forum Fees	= \$ 4,825.00
Total Fees	= \$ 5,075.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,075.00

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

ARBITRATION PANEL

Demetrio S. Timban, Jr., Esq. - Public Arbitrator, Presiding Chairperson
Dwight Wassong, Esq. - Public Arbitrator
Henry C. Malon, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signatures



Demetrio S. Timban, Jr., Esq.
Public Arbitrator, Presiding Chairperson

9/21/06
Signature Date

Dwight Wassong, Esq.
Public Arbitrator

Signature Date

Henry C. Malon, Esq.
Non-Public Arbitrator

Signature Date

September 26, 2006
Date of Service (For NASD Dispute Resolution use only)

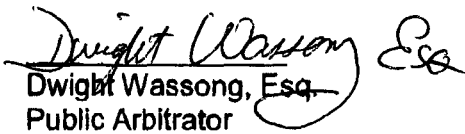
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Public Arbitrator, Presiding Chairperson

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Dwight Wassong, Esq.
Public Arbitrator

9/20/06
Signature Date

Henry C. Malon, Esq.
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