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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Wachovia Securities, L.L.C.

Case Number: 05-00621

Name of the Respondent  
Marcel Pope

Hearing Site: Orlando, FL

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Nature of the Dispute: Member vs. Associated Person.

**REPRESENTATION OF PARTIES**

For Wachovia Securities, L.L.C. ("Wachovia"), hereinafter referred to as "Claimant": Jonathan E. Levine, Esq., Law Office of Daniel S. Fiore, Arlington, VA.

Marcel Pope ("Pope"), hereinafter referred to as "Respondent", appeared pro se through the evidentiary hearing. Subsequent to the evidentiary hearing, Respondent Pope was represented by G. Michael Keenan, Esq., West Palm Beach, FL.

**CASE INFORMATION**

Statement of Claim filed on or about: February 4, 2005.

Claimant signed the Uniform Submission Agreement: December 23, 2004.

Respondent's Statement of Answer and Three Counterclaims in Arbitration ("Counterclaim") filed on or about: July 8, 2005.

Respondent signed the Uniform Submission Agreement: July 8, 2005.

Claimant's Answer and Affirmative Defenses to Respondent's Counterclaim filed on or about: July 21, 2005.

Respondent's Objection to Non-Public Arbitrators filed on or about: September 26, 2005.

Respondent's Motion to Reopen Hearing filed on or about: September 30, 2005.

Claimant's Response to Respondent's Motion for Rehearing and Respondent's Objection to Non-Public Arbitrators filed on or about: October 5, 2005.

Respondent's Reply to Claimant's Response to Respondent's Motion to Reopen Hearing filed on or about: October 11, 2005.

Respondent's Reply to Claimant's Response to Objection to Non-Public Arbitrators filed on or about: October 12, 2005.

Respondent's Motion to Amend Answer and Affirmative Defenses filed on or about: October 4, 2005.

Claimant's Opposition to Respondent's Motion to Amend Answer and Affirmative Defenses filed on or about: October 18, 2005.

**CASE SUMMARY**

Claimant asserted the cause of action of breach of promissory note. The cause of action relates to the promissory note executed by Respondent.

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: commissions taken away and withheld; severed partnerships and constructive termination; and, non-statutory retaliatory discrimination. The causes of action relate to the termination of Respondent's employment with Claimant.

Unless specifically admitted in its Answer to the Counterclaim, Claimant denied the allegations made in Respondent's Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$62,499.92, interest of \$8,100.63 that had accrued as of December 18, 2003, plus interest accruing at the rate of 6.75% per annum since December 18, 2003, attorneys' fees, costs, dismissal of Respondent's Counterclaim, and such other relief as the undersigned arbitrators (the "Panel") deemed appropriate.

In his Answer, Respondent requested dismissal of the Statement of Claim and that the promissory note be deemed forgiven on December 18, 2003. In his Counterclaim, Respondent requested compensatory damages of \$203,569.00, commissions taken away and withheld of \$24,900.00, and punitive damages of \$610,707.00.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about November 4, 2005, the Panel issued an order which denied Respondent's Objection to Non-Public Arbitrators, Respondent's Motion to Reopen Hearing, and Respondent's Motion to Amend Answer and Affirmative Defenses.

During the evidentiary hearing, Respondent orally withdrew his claim for compensatory damages for severed partnerships and constructive termination and his claim for punitive damages for retaliatory discrimination.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable and shall pay to Claimant compensatory damages in the sum of \$62,499.92, contract interest of \$8,100.63 that had accrued as of December 18, 2003, and contract interest at the rate of 6.75% accruing from December 18, 2003 until the date of payment of the Award.

Respondent is liable and shall pay to Claimant the sum of \$1,000.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Respondent is liable and shall pay to Claimant attorneys' fees in the sum of \$20,833.00, pursuant

to the contract between the parties.

Respondent's Counterclaim is dismissed, with prejudice.

Any and all claims for relief not specifically addressed herein, including Respondent's request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 375.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent Wachovia is a member firm and a party.

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed during these proceedings.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were assessed during these proceedings.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

#### **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. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: September 9, 2005 1 session

One (1) Pre-hearing session with the Panel @ \$1,200.00/session = \$1,200.00  
Pre-hearing conference: June 14, 2005 1 session

Three (3) Hearing sessions @ \$1,200.00/session = \$3,600.00  
Hearing Dates: September 21, 2005 2 sessions  
September 22, 2005 1 session

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Total Forum Fees = \$5,250.00

The Panel has assessed the total forum fees of \$5,250.00 to Respondent.

#### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

#### Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$1,000.00
<u>Member Fees</u>	<u>= \$3,550.00</u>
Total Fees	= \$4,550.00
<u>Less payments</u>	<u>= \$4,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$5,250.00</u>
Total Fees	= \$5,625.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution	= \$4,050.00

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

#### ARBITRATION PANEL

Gregory L. Hess	- Non-Public Arbitrator, Presiding Chairperson
Robert H. Nelson	- Non-Public Arbitrator
Robert K. MacKenzie	- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

Gregory L. Hess

Non-Public Arbitrator, Presiding Chairperson

Signature Date

/s/

Robert H. Nelson

Non-Public Arbitrator

Signature Date

/s/

Robert K. MacKenzie

Non-Public Arbitrator

Signature Date

November 4, 2005

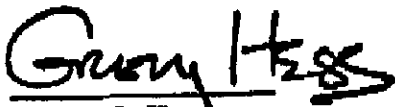
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NASD Dispute Resolution

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Concurring Arbitrators' Signatures



Gregory L. Hase

Non-Public Arbitrator, Presiding Chairperson

11/04/2005

Signature Date

Robert H. Nelson

Non-Public Arbitrator

Signature Date

Robert K. MacKenzie

Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution

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Concerning Arbitrators' Signatures

Gregory L. Hess

Non-Public Arbitrator, Presiding Chairperson

Signature Date

Robert H. Nelson

Robert H. Nelson

Non-Public Arbitrator

11/04/2005

Signature/Date

Robert K. MacKenzie

Non-Public Arbitrator

Signature Date

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Concurring Arbitrators' Signatures

Gregory L. Hess

Non-Public Arbitrator, Presiding Chairperson

Signature Date

Robert H. Nelson

Non-Public Arbitrator

Signature Date



Robert K. MacKenzie

Non-Public Arbitrator

11-4-05  
Signature Date

Date of Service (For NASD Dispute Resolution use only)