

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

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In the Matter of the Arbitration Between:

James O'Leary (Claimant) v. Wachovia Securities, LLC (Respondent)

Case Number: 05-01654

Hearing Site: Newark, New Jersey

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

Claimant James O'Leary ("O'Leary") hereinafter referred to as "Claimant": Dan A. Druz, Esq., Manasquan, NJ.

Respondent Wachovia Securities, LLC ("Wachovia") hereinafter referred to as "Respondent": David Krulewicz, Esq., Stark & Stark, P.C., Lawrenceville, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: March 30, 2005.

Claimant signed the Uniform Submission Agreement: March 29, 2005.

Statement of Answer and Counterclaim filed by Respondent on or about: May 24, 2005.

Respondent signed the Uniform Submission Agreement: May 24, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: wrongful termination, fraudulent inducement, fraud, conversion, and promissory note.

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

**RELIEF REQUESTED**

Claimant requested: \$175,000.00 in compensatory damages, permanently enjoining Respondent from denying Claimant complete and total access to funds in his Wachovia accounts, attorneys' fees, costs, and such other and further relief as the Panel may deem just and proper.

In their Counterclaim Respondent asserted the following: breach of promissory note and non-solicitation covenant.

In their Counterclaim Respondent requested that Claimant be prohibited from soliciting Wachovia clients for a period of one year from the date of his termination, or until he has made full payment of the outstanding balance of his Promissory Note, plus interest.

### **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. The Claimant is to retain the forgivable loan in the amount of \$172,822.00 given by the Respondent.
2. The Counterclaim of the Respondent to recover the above loan is dismissed.
3. The freeze on the Claimant's accounts with the Respondent is to be removed and Claimant is to have full access to his accounts.
4. All monies due Claimant are to accrue interest at 7% per annum from February 1, 2005.
5. 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 will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
Counter claim	= \$ 500.00

#### **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 events giving rise to the dispute. Accordingly, Wachovia is a party.

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

**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.

1. Associated person O'Leary is assessed:

Injunctive relief surcharge	= \$ 2,500.00
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**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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: June 29, 2005 1 session	

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: May 18, 2005 1 session	

Six (6) Hearing sessions @ \$1,125.00	= \$ 6,750.00
Hearing Dates: July 7, 2005 2 sessions	
July 8, 2005 2 sessions	
July 26, 2005 2 sessions	

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Total Forum Fees	= \$ 8,325.00
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1. The Panel has assessed \$ 8,325.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Injunctive Relief Fees</u>	= \$ 2,500.00
Total Fees	= \$ 2,800.00
<u>Less payments</u>	= \$ 3,750.00
Refund Due Claimant	= \$ 950.00

2. Respondent is solely liable for:

Filing Fee	= \$ 500.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 8,325.00
Total Fees	= \$14,025.00
Less payments	= \$ 6,700.00
Balance Due NASD Dispute Resolution	= \$ 7,325.00

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

**ARBITRATION PANEL**

Martin Jay Siegel	-	Public Arbitrator, Presiding Chairperson
Harold Rubin	-	Public Arbitrator
John B. Ryan	-	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.



Martin Jay Siegel  
Public Arbitrator, Presiding Chairperson

8/2/05  
Signature Date

Harold Rubin  
Public Arbitrator

Signature Date

John B. Ryan  
Non-Public Arbitrator

Signature Date

August 12, 2005

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution  
Arbitration No. 05-01654  
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\_\_\_\_\_  
Martin Jay Siegel  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Harold Rubin  
Public Arbitrator

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

  
\_\_\_\_\_  
John B. Ryan  
Non-Public Arbitrator

7/29/05  
\_\_\_\_\_  
Signature Date

August 12, 2005  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)