
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants
Harry and Marilyn R. Haber

Case Number: 05-02476

Names of the Respondents
Wachovia Securities, L.L.C.
Marc Safman

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

Harry Haber ("H. Haber") and Marilyn R. Haber ("M. Haber"), hereinafter collectively referred to as "Claimants", appeared pro se.

For Wachovia Securities, L.L.C. ("Wachovia"), hereinafter referred to as "Respondent Wachovia": Brian D. Elias, Esq., Fowler, White and Burnett, P.A., Miami, Florida.

Marc Safman ("Safman") initially appeared pro se. Thereafter, on or about September 8, 2005, Brian D. Elias, Esq., Fowler, White and Burnett, P.A., Miami, Florida, filed a Notice of Appearance on Respondent Safman's behalf.

CASE INFORMATION

Statement of Claim filed on or about: May 10, 2005.

Claimants signed the Uniform Submission Agreements: May 5, 2005.

Motion to Dismiss, or in the Alternative, Answer to Claimants' Statement of Claim filed by Respondent Wachovia on or about: July 18, 2005.

Respondent Safman did not file an Answer to the Statement of Claim.

Respondent Wachovia signed the Uniform Submission Agreement: June 17, 2005.

Respondent Safman did not file an executed Uniform Submission Agreement.

Claimants' response to Respondent Wachovia's Motion to Dismiss filed on or about: September 14, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; breach of contract; and, negligence. The causes of action relate to a Tax Compliance Levy issued by the State of New York against Claimants' account with Respondent Wachovia.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$34,000.00, punitive damages in the amount of \$102,000.00, interest in the amount of \$600.00, costs, attorney's fees, and such other relief deemed proper by the undersigned arbitrators (the "Panel").

Respondent Wachovia requested a dismissal of this action with attorneys' fees assessed against the Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Safman did not file with NASD Dispute Resolution ("NASD") a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the Panel on all issues submitted.

On or about July 18, 2005, Respondent Wachovia filed a Motion to Dismiss or, in the Alternative, Answer to Claimants' Statement of Claim which asserted that Claimants' Claim was frivolous and without merit and had no basis in law or in fact. Respondent Wachovia further asserted that pursuant to the Florida Statutes Section 77.06(2) and New York Civil Practice Law and Rules Section 6223, it complied with the proper rules and procedures in New York and Florida.

On or about September 14, 2005, Claimants filed a response which asserted an objection to the Motion to Dismiss based upon Florida law.

During the initial telephonic pre-hearing conference, on or about September 14, 2005, the Panel heard oral argument on Respondent Wachovia's Motion to Dismiss.

On or about September 14, 2005, Claimants filed with the NASD a Notice of Dismissal of Respondent Safman, in this matter.

On or about October 12, 2005, the Panel granted Respondent Wachovia's Motion to Dismiss.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings and the oral argument presented during the initial telephonic pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are dismissed, with prejudice.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages and the parties' requests for attorneys' fees are 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

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 member and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournments fees were incurred in this matter.

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 incurred in this matter.

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 incurred in this matter.

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 the Panel @ \$1,125.00/session = \$1,125.00

Pre-hearing conference: September 14, 2005 1 session

Total Forum Fees = \$1,125.00

The Panel assessed forum fees of \$562.50 to Claimants, jointly and severally.
The Panel assessed forum fees of \$562.50 to Respondent Wachovia.

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 are 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 in this matter.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less payments</u>	= \$ 862.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Wachovia is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$5,762.50
<u>Less payments</u>	= \$2,450.00
Balance Due NASD Dispute Resolution	= \$3,312.50

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

ARBITRATION PANEL

Howard A Rose, Esq.	-	Public Arbitrator, Presiding Chairperson
Iris Marylin Bass, Esq.	-	Public Arbitrator
John B. Sprung, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

Howard A Rose, Esq.

Public Arbitrator, Presiding Chairperson

October 19, 2005

Signature Date

/s/

Iris Marilyn Bass, Esq.

Public Arbitrator

October 17, 2005

Signature Date

/s/

John B. Sprung, Esq.

Non-Public Arbitrator

October 14, 2005

Signature Date

October 19, 2005

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 05-02476
Award Page 5

Concurring Arbitrators' Signatures

Howard A. Rose
Howard A. Rose, Esq.
Public Arbitrator, Presiding Chairperson

10/19/65
Signature Date

Iris Marilyn Bass, Esq.
Public Arbitrator

Signature Date

John B. Sprung, Esq.
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution
Arbitration No. 05-02476
Award Page 5

Concurring Arbitrators' Signatures

Howard A. Rose, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Iris Marilyn Bass, Esq.
Public Arbitrator

Oct. 12, 2005
Signature Date

John B. Sprung, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

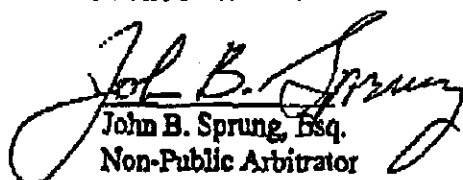
Concurring Arbitrators' Signatures

Howard A Rose, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Iris Marilyn Bass, Esq.
Public Arbitrator

Signature Date


John B. Sprung, Esq.
Non-Public Arbitrator

10/14/05
Signature Date

Date of Service (For NASD Dispute Resolution office use only)