

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of Claimants

Thomas C. Canavan, Individually and as
Beneficiary of Thomas C. Canavan, IRA;
Natalie J. Canavan, Individually and as Trustee
of the Thomas C. Canavan 1993 Childrens'
Trust UA DTD 11/15/93 FBO Kelly L.
Canavan and FBO Mary Ann Canavan; Kelly
Lynne Canavan, Individually and as Trustee of
the Canavan Family 1997 Insurance Trust;
and Mary Ann Canavan Henry, Individually
and as Trustee of the Canavan Family 1997
Insurance Trust

vs.

Case Number: 05-05673
Hearing Site: Chicago, Illinois

Names of Respondents

Wachovia, Securities, LLC and
Ronald K. Brierton

NATURE OF THE DISPUTE

Customers vs. Member and Associated Person

REPRESENTATION OF PARTIES

Thomas C. Canavan, Individually and as Beneficiary of Thomas C. Canavan, IRA; Natalie J. Canavan, Individually and as Trustee of the Thomas C. Canavan 1993 Childrens' Trust UA DTD 11/15/93 FBO Kelly L. Canavan and FBO Mary Ann Canavan; Kelly Lynne Canavan, Individually and as Trustee of the Canavan Family 1997 Insurance Trust; and Mary Ann Canavan Henry, Individually and as Trustee of the Canavan Family 1997 Insurance Trust ("Claimants") were represented by Peter B. Shaeffer, Esq., Attorney at Law, Chicago, Illinois.

Wachovia, Securities, LLC ("Wachovia") and Ronald K. Brierton ("Brierton"), hereinafter collectively referred to as "Respondents," were represented by Beverly Jo Slaughter, Esq., Wachovia Securities, LLC, Richmond, Virginia.

CASE INFORMATION

The Statement of Claim was filed on or about November 11, 2005. The Submission Agreement of Claimant, Thomas C. Canavan, Individually and as Beneficiary of Thomas C. Canavan, IRA, was signed on or about October 21, 2005. The Submission Agreement of Claimant, Natalie J. Canavan, Individually and as Trustee of the Thomas C. Canavan 1993 Childrens' Trust UA DTD 11/15/93 FBO Kelly L. Canavan and FBO Mary Ann Canavan, was signed on or about October 21, 2005. The Submission Agreement of Claimant, Kelly Lynne Canavan, Individually and as Trustee of the Canavan Family 1997 Insurance Trust, was signed on or about October 20, 2005. The Submission Agreement of Claimant, Mary Ann Canavan Henry, Individually and as Trustee of the Canavan Family 1997 Insurance Trust, was signed on or about October 20, 2005.

The Statement of Answer was filed by jointly Respondents on or about January 20, 2006. The Submission Agreement of Respondent Wachovia was signed on or about January 19, 2006 by Beverly Jo Slaughter. The Submission Agreement of Respondent Brierton was signed on or about February 16, 2006.

CASE SUMMARY

Claimants asserted the following causes of action: misrepresentation; fraud; negligent misrepresentation; failure to supervise; negligent supervision; and breach of the Illinois Consumer Fraud and Deceptive Business Practices Act. The causes of action related to Claimants' allegations that Respondents recommended that they purchase "C" series mutual funds without disclosing that it was in their best financial interest to purchase "A" series of the same funds. Said funds included Eaton Vance Income Fund, PIMCO High Yield Fund, MFS High Income, and Goldman Sachs Tr. High Yield. Claimants also alleged that Respondents advised that the cancellation of a Last Survivor Flexible Premium Variable Life Policy and issuance of a new policy would be at no expense to Thomas C. Canavan when in fact the cost of issuance of the new policy was materially greater than the cost of the old policy. Claimants further alleged that Respondents recommended that Thomas C. Canavan purchase Rydex Dynamic Tempest 500 Fund Class C and then recommended various exchanges of the fund, which ultimately resulted in a margin debt, which was being used to finance a position in which one fund would profit and the other fund would lose based on movement of the same underlying benchmark.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Wachovia is not liable to Claimants for negligent supervision because Wachovia had

established procedures, and a system for applying those procedures, that were designed to prevent and detect the alleged violations at issue; Wachovia reasonably discharged its duties and obligations under its supervisory procedures; no private cause of action exists based upon a securities brokerage firm's alleged failure to comply with its own rules; any losses suffered by Claimants resulted from their own actions or the actions of persons or entities that were not affiliated with Respondents; Claimants are barred from a recovery because they directed, authorized and consented to, acquiesced in, or ratified the transactions in question; Claimants are barred from recovery because they failed to mitigate their alleged damages; at all times material, Claimants knew, understood and accepted the risks associated with the transactions at issue; Claimants are barred from recovery because they were apprised fully of the nature and risks of their investments; and Claimants failed to exercise the requisite degree of diligence and care that a reasonable investor would exercise under similar circumstances.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$500,000.00
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing, Respondent, Ronald K. Brierton, requested expungement of all references to this matter from his CRD record.

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

- 1.) Respondent, Wachovia Securities, LLC, is liable for and shall pay to Claimant, Thomas C. Canavan, Individually, the sum of \$12,833.00 in compensatory damages;

- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including expungement and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee 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. In this matter, the member firm is Wachovia Securities, LLC.

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 hearing 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) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: March 28, 2006	1 session

Seven (7) Hearing sessions x \$1,125.00	= \$ 7,875.00
Hearing Dates:	
October 24, 2006	2 sessions
October 25, 2006	2 sessions
October 26, 2006	2 sessions
December 11, 2006	1 session

Total Forum Fees	= \$ 9,000.00
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The Panel has assessed \$4,500.00 of the forum fees jointly and severally to Thomas C. Canavan, Individually and as Beneficiary of Thomas C. Canavan, IRA; Natalie J. Canavan, Individually and as Trustee of the Thomas C. Canavan 1993 Childrens' Trust UA DTD 11/15/93 FBO Kelly L. Canavan and FBO Mary Ann Canavan; Kelly Lynne Canavan, Individually and as Trustee of the Canavan Family 1997 Insurance Trust; and Mary Ann Canavan Henry, Individually and as Trustee of the Canavan Family 1997 Insurance Trust.

The Panel has assessed \$4,500.00 of the forum fees jointly and severally to Wachovia Securities, LLC and Ronald K. Brierton.

FEE SUMMARY

Claimants, Thomas C. Canavan, Individually and as Beneficiary of Thomas C. Canavan, IRA; Natalie J. Canavan, Individually and as Trustee of the Thomas C. Canavan 1993 Childrens' Trust UA DTD 11/15/93 FBO Kelly L. Canavan and FBO Mary Ann Canavan; Kelly Lynne Canavan, Individually and as Trustee of the Canavan Family 1997 Insurance Trust; and Mary Ann Canavan Henry, Individually and as Trustee of the Canavan Family 1997 Insurance Trust, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,500.00
Total Fees	= \$ 4,800.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 3,375.00

Respondent, Wachovia Securities, LLC, is liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Wachovia Securities, LLC and Ronald K. Brierton, are jointly and severally liable for:

Forum Fees	= \$ 4,500.00
Total Fees	= \$ 4,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,500.00

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

ARBITRATION PANEL

Frank A. Dusek, CPA - Public Arbitrator, Presiding Chair
William R. Jackson, Jr., Esq. - Public Arbitrator
Doris H. Geck - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Frank A. Dusek, CPA
Frank A. Dusek, CPA
Public Arbitrator, Presiding Chair

December 18, 2006
Signature Date

/s/ William R. Jackson, Jr., Esq.
William R. Jackson, Jr., Esq.
Public Arbitrator

December 19, 2006
Signature Date

/s/ Doris H. Geck
Doris H. Geck
Non-Public Arbitrator


December 18, 2006
Signature Date

December 19, 2006
Date of Service (For NASD office use only)

ARBITRATION PANEL

Frank A. Dusek, CPA - Public Arbitrator, Presiding Chair
William R. Jackson, Jr., Esq. - Public Arbitrator
Doris H. Geck - Non-Public Arbitrator

Concurring Arbitrators' Signatures:



Frank A. Dusek, CPA
Public Arbitrator, Presiding Chair

12-18-06

Signature Date

William R. Jackson, Jr., Esq.
Public Arbitrator

Signature Date

Doris H. Geck
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)


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Frank A. Dusek, CPA - Public Arbitrator, Presiding Chair
William R. Jackson, Jr., Esq. - Public Arbitrator
Doris H. Geck - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Frank A. Dusek, CPA
Public Arbitrator, Presiding Chair

Signature Date



William R. Jackson, Jr., Esq.
Public Arbitrator

12/19/06

Signature Date

Doris H. Geck
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

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William R. Jackson, Jr., Esq. - Public Arbitrator
Doris H. Geck - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Frank A. Dusek, CPA
Public Arbitrator, Presiding Chair

Signature Date

William R. Jackson, Jr., Esq.
Public Arbitrator

Signature Date


Doris H. Geck
Non-Public Arbitrator

12/18/2006
Signature Date

Date of Service (For NASD office use only)