

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

Frank E. Schiavone
Lori K. Schiavone

Case Number: 06-00170

Name of the Respondent

Wachovia Securities, LLC

Hearing Site: Orlando, FL

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Frank E. Schiavone and Lori K. Schiavone, hereinafter collectively referred to as "Claimants": Robert J. Winicki, Esq., Winicki Law Firm, P.A., Jacksonville, FL.

For Wachovia Securities, LLC ("Wachovia"), hereinafter referred to as "Respondent": Andrew R. Park, Vice President/Attorney, Wachovia, Richmond, VA.

CASE INFORMATION

Statement of Claim filed on or about: January 12, 2006.

Claimants signed the Uniform Submission Agreement: January 10, 2006.

Respondent's Answer to Statement of Claim and Motion to Dismiss ("Motion to Dismiss") filed on or about: March 8, 2006.

Respondent signed the Uniform Submission Agreement: March 8, 2006.

Claimants' Reply and Objection to Respondent's Answer and Motion to Dismiss filed on or about: March 17, 2006.

Respondent's Response to Claimants' Reply and Objection filed on or about: March 31, 2006.

CASE SUMMARY

Claimants asserted the cause of action of negligence. The cause of action relates to the sale of shares of IVAX Corp. in Claimants' account.

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

RELIEF REQUESTED

Claimants requested compensatory damages of approximately \$257,120.94, prejudgment interest of \$31,833.94, attorneys' fees, costs, and such other relief as would be just and equitable.

Respondent requested dismissal of the Statement of Claim and any other relief as is

just.

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 undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

Respondent's Motion to Dismiss is denied. The standard for negligence was not met. Respondent's agent, Steven T. Foody, performed in accordance with Respondent's guidelines. However, Mr. Foody's performance was called into question because Respondent's standards suggest/recommend that several available resources be utilized when providing advice to customers. This performance standard was not met. Mr. Foody testified that he read only the Swap/Trade Idea to Claimant Dr. Frank E. Schiavone and that it was the sole source document he used when he advised Dr. Schiavone. Therefore, the Panel compensates Claimants with a damage award of \$25,712.09. The Panel's decision is that Mr. Foody should have provided to Mr. Schiavone some of the additional options that were available on January 12/13, 2005.

The Panel unanimously decided to award the Claimants 10% of the compensatory damages they requested. The evidence submitted by the parties demonstrated that Mr. Foody did not provide Dr. Schiavone with sufficient information regarding the IVAX stock that was traded on January 13, 2005. Specifically, Mr. Foody testified that he "read" a January 12, 2005 "Sell/Swap Idea" e-mail to Dr. Schiavone during a telephone conversation on January 12, 2005. Dr. Schiavone admitted that he advised Mr. Foody to "dump the stock" (23,437 shares – non-discretionary) that same day (according to Dr. Schiavone) or the very next day (according to Mr. Foody).

Mr. Foody and other witnesses provided by Respondent testified that Mr. Foody had access to other sources of information such as the Credit Suisse First Boston daily report (which rated IVAX as Neutral as of January 13, 2005). Mr. Foody did not divulge to, or discuss with, Dr. Schiavone the contents of the Credit Suisse First Boston daily report or any other resources. Mr. Foody also testified that he did not suggest to, or have any dialogue with, Dr. Schiavone regarding TEVA or Barr Pharmaceuticals which were mentioned in the "Swap/Sell Idea" e-mail as a potential buy/sell.

Dr. Schiavone testified that he considers himself to be of "average" intelligence within the stock industry. He stated that Respondent's refusal to provide him with a copy of the "Swap/Sell Idea" e-mail resulted in a brokerage firm providing "...unsound, reckless, ill-informed, or otherwise defective advice when given." The Panel disagrees. The evidence submitted clearly demonstrated that the policy of Respondent prohibited distribution of this document. Dr. Schiavone testified that he was aware that the IVAX stock had risen in March 2005, well before the acquisition by TEVA Pharmaceuticals in July 2005. Nothing prevented Dr. Schiavone from contacting another financial advisor

about the status of IVAX stock. He had sufficient time to repurchase IVAX stock from a different Wachovia Securities, LLC financial advisor or choose to contact another brokerage firm before the acquisition of IVAX by TEVA Pharmaceuticals in July 2005. Claimants failed to demonstrate how the failure to obtain a copy of the "Swap/Sell Idea" e-mail precluded them from ever obtaining any information from other sources or from purchasing any more IVAX stock prior to the TEVA acquisition. Claimants realized approximately an \$80,000.00 gain in the sale of their IVAX stock; therefore, the Panel disagrees with their allegation of any losses.

Claimants' request for prejudgment interest and costs is denied.

Claimants and Respondent must bear their own costs inclusive of attorneys' fees, expert witness fees, travel and per diem (if any) expenses, and all other associated costs in this matter.

Any and all requests for relief not specifically addressed herein are denied, with prejudice.

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	= \$ 300.00
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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	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment 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 or each decision rendered on a discovery-related motion on the papers. 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 the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: May 15, 2006 1 session	
Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: January 11, 2007 2 sessions	
January 12, 2007 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$5,625.00

The Panel has assessed \$5,062.50 of the forum fees jointly and severally to Claimants. The Panel has assessed \$562.50 of the forum fees 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 in this matter.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$5,062.50
<hr/> Total Fees	<hr/> = \$5,362.50
Less payments	= \$1,425.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$3,937.50

Respondent is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$ 562.50
<hr/> Total Fees	<hr/> = \$5,762.50

Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

Dwayne E. Clark, Sr.	-	Public Arbitrator, Presiding Chairperson
Ron Pekoe	-	Public Arbitrator
Norman R. Gohr	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Dwayne E. Clark, Sr.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/
Ron Pekoe
Public Arbitrator

Signature Date

/s/
Norman R. Gohr
Non-Public Arbitrator

Signature Date

January 19, 2007
Date of Service (For NASD Dispute Resolution office use only)

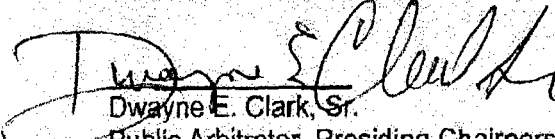
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

Dwayne E. Clark, Sr.	-	Public Arbitrator, Presiding Chairperson
Ron Pekoe	-	Public Arbitrator
Norman R. Gohr	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Dwayne E. Clark, Sr.
Public Arbitrator, Presiding Chairperson

01/17/2007
Signature Date

Ron Pekoe
Public Arbitrator

Signature Date

Norman R. Gohr
Non-Public Arbitrator

Signature Date

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

<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 582.50

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

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Ron Pekoe	•	Public Arbitrator
Norman R. Gohr	•	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Dwayne E. Clark, Sr.
Public Arbitrator, Presiding Chairperson

Signature Date



Ron Pekoe
Public Arbitrator

1/17/07
Signature Date

Norman R. Gohr
Non-Public Arbitrator

Signature Date

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

<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

Dwayne E. Clark, Sr.	-	Public Arbitrator, Presiding Chairperson
Ron Pekoe	-	Public Arbitrator
Norman R. Gohr	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Dwayne E. Clark, Sr.
Public Arbitrator, Presiding Chairperson

Signature Date

Ron Pekoe
Public Arbitrator

Signature Date



Norman R. Gohr
Non-Public Arbitrator

1/17/07
Signature Date

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