

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

---

In the Matter of the Arbitration Between:

Bruce Wiegand, Claimant v. Wachovia Securities, LLC., Respondent

Wachovia Securities, LLC, Counter-Claimant v. Bruce Wiegand, Counter-Respondent

Case Number: 06-00462

Hearing Site: San Diego, California

---

Nature of the Dispute:      Associated Person v. Member  
   Member v. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant/Counter-Respondent  
("Claimant"):

L. B. Chip Edleson, Esq.  
Edleson & Rezzo  
San Diego, California

For Respondent/Counter-Claimant  
("Respondent"):

Eric M. Steinert, Esq.  
Seyfarth Shaw LLP  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: January 25, 2006

Claimant's Uniform Submission Agreement signed: January 24, 2006

Statement of Answer filed by Respondent: March 23, 2006

Amended Statement of Answer filed by Respondent: April 25, 2006

Respondent's Uniform Submission Agreement signed: March 23, 2006

Counterclaim filed by Respondent: June 5, 2006

Answer to Counterclaim filed by Claimant: June 21, 2006

### **CASE SUMMARY**

Claimant alleged breach of express contract, termination without good cause, wrongful termination in violation of public policy, and negligence. Claimant was formerly employed by Respondent.

Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim. In its counterclaim, Respondent alleged that Claimant is responsible, in whole or in part, for an award rendered jointly and severally against the respondents in NASD Arbitration Case 03-00704 *Michael & Katrina Rooney, Caitlin Rooney UTMA, Shannon Rooney UTMA, and Michael Rooney, Jr. UTMA v. Wachovia Securities LLC, Bruce E. Wiegand, and Morton S. Rudin*.

Claimant denied the allegations of wrongdoing set forth in Respondent's counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested unspecified compensatory damages, punitive damages, interest, and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety. In its counterclaim, Respondent requested equitable indemnification apportioned according to principles of comparative fault relating to the Rooney arbitration and interest.

Claimant requested dismissal of Respondent's Counterclaim in its entirety and costs.

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

On November 17, 2006, Respondent filed a request for dismissal of Claimant's negligence claim. On November 27, 2006, Claimant filed a response wherein Claimant advised that he had chosen not to pursue any negligence claims. At the hearing, the Panel denied Respondent's moot request for dismissal of Claimant's negligence claim.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **FINDINGS**

As a general rule, the employment of an at-will employee may be terminated without cause. However, if the termination is based on a particular cause and if the employer's improper conduct contributed to that particular cause, the termination should be found to be inequitable and wrongful.

Claimant Wiegand was terminated from his employment by Respondent Wachovia as a Complex Manager because of the adverse award rendered against him in the matter of *Michael and Katrina Rooney, et. al. v Wachovia Securities, LLC, Bruce E. Wiegand and Morton S. Rooney* (NASD Docket No. 03-00704). But for that adverse award, Wiegand would have been employed by Wachovia in his then-position for an additional eight years. The notation of the adverse award on Wiegand's CRD effectively prevents him from finding alternative employment in his field. Despite diligent efforts, Wiegand has been unable to find employment that would provide significant pay and benefits relative to those he earned, and would have earned, as a Wachovia employee.

When the Rooney arbitration claim was filed in early January 2003, Wachovia selected, retained and instructed defense counsel. Wachovia proposed that its counsel should represent all three respondents in that arbitration in order to assure a unified defense. Since such a shared counsel arrangement is ethically permissible only if each affected client gives written informed consent, Wachovia's counsel sought Wiegand's consent and identified some conflicts of interest that might arise among the three respondents. Although counsel advised Wiegand that he should consider retaining separate counsel to advise him regarding the requested consent, neither counsel nor Wachovia told Wiegand that, in similar situations, Wachovia has agreed to pay the fee of separate counsel. This information would have been material and important to a person in Wiegand's situation. Wiegand did not consult separate counsel. He signed the consent letters proposed by Wachovia's counsel upon being told that Wachovia wanted him to do so.

At the time Wiegand's consent to shared representation was solicited, Wachovia knew that Wiegand had no training or experience on which he could base an informed consent. Wachovia and its counsel knew, or should have known, that without the advice of independent counsel it would not be possible for a person with Wiegand's education and background to anticipate and fairly evaluate all of the conflicts that might arise in the preparation and presentation of the proposed unified defense, particularly given the differing degrees of involvement of the three respondents in the alleged wrongful trading activity and, with respect to the punitive damages claim, their vastly differing financial resources.

On or about November 18, 2004, the Rooney arbitration panel awarded compensatory damages of \$188,944.04 and punitive damages of \$377,988.08 against the three respondents, jointly and severally. Because of this award, Wiegand's employment was summarily terminated on February 9, 2005.

We determine that Wiegand's consent to shared representation was not informed and that the shared representation was improper. The significant conflicts of interest inherent in the unified defense were prejudicial to Wiegand. Having procured and directed this improper representation, Wachovia, but not Wiegand, must bear its consequences. We hold that it was inequitable and wrongful for Wachovia to terminate Wiegand's employment because of the adverse award.

That separate counsel might have successfully defended Wiegand is suggested by the fact that apparently mitigating defenses particular to Wiegand were not raised during the hearing. For example, evidence of Wiegand's net worth was not offered notwithstanding that, as a general rule, punitive damages may not exceed 10% of a respondent's net worth. The punitive damages portion of the Rooney award represented approximately 70% of Wiegand's net worth at the time of the Rooney hearing.

When Wiegand inquired about appealing the Rooney award, shared counsel simply informed him that appeals of arbitration awards are costly and seldom successful. The question of whether or not to appeal posed a direct conflict of interests between Wachovia and Wiegand. If the punitive award against Wiegand had been vacated, Wiegand would have been relieved of that liability but Wachovia's right to require contribution by Wiegand would have been compromised. Thus, it was in Wachovia's financial interest that the punitive award against Wiegand stand while, obviously, it was in Wiegand's financial interest that it be vacated. This conflict was not disclosed to Wiegand when he consented to shared representation or when he inquired about an appeal. Although Wachovia has paid the full amount of the Rooney award, by its Counterclaim filed in this arbitration Wachovia seeks to recover a portion of that payment from Wiegand.

We find and conclude that Wachovia's termination of Wiegand was wrongful and that he was damaged thereby in the amount provided in the Award section below.

**AWARD**

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

- 1) Respondent is liable to and shall pay Claimant the sum of \$1,500,000.00 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimant interest at the rate of 10% per annum on the compensatory damages awarded from February 9, 2005, compounded annually, until the date compensatory damages are paid in full to Claimant.
- 3) The NASD forum fees in this matter are assessed to Respondent.
- 4) Respondent's counterclaim is denied in its entirety.
- 5) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 250.00
Respondent's Counterclaim	= \$ 500.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Wachovia Securities, LLC., is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,200.00
<b>Total Member Fees</b>	<b>= \$ 4,450.00</b>

#### **Forum Fees and Assessments**

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion decided 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:

(1) Pre-hearing conference session with the Panel @ \$1,000.00/session = \$ 1,000.00  
Pre-hearing conference: May 30, 2006 1 session

(10) Hearing sessions @ \$1,000.00/session = \$10,000.00  
Hearings: November 29, 2006 2 sessions  
November 30, 2006 2 sessions  
December 1, 2006 2 sessions  
December 4, 2006 2 sessions  
December 5, 2006 2 sessions

---

<b>Total Forum Fees</b>	<b>= \$11,000.00</b>
-------------------------	----------------------

The Panel assessed \$11,000.00 of the forum fees to Respondent.

### **Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 200.00
Note: Claimant's filing fee is limited to \$200.00 pursuant to <i>Armendariz v. Foundation Health Psychcare Services, Inc.</i> , 24 Cal. 4 <sup>th</sup> 83 (2000); <i>Little v. Auto Stigler</i> , 20 Cal 4 <sup>th</sup> 1064; <i>cert denied</i> , 124 S. Ct. 83 (2003); and, <i>McManus v. CIBC World Markets Corp.</i> , 109 Cal. App. 4 <sup>th</sup> 76 (2003).	
Less payments	= \$(1,250.00)
<b>Refund Due</b>	<b>= \$(1,050.00)</b>

2. Respondent is charged with the following fees and costs:


Balance due for Claimant's Filing Fee	= \$ 50.00
Note: Balance of Claimant's filing fee is charged to Respondent pursuant to <i>Armendariz v. Foundation Health Psychcare Services, Inc.</i> , 24 Cal. 4 <sup>th</sup> 83 (2000); <i>Little v. Auto Stigler</i> , 20 Cal 4 <sup>th</sup> 1064; <i>cert denied</i> , 124 S. Ct. 83 (2003); and, <i>McManus v. CIBC World Markets Corp.</i> , 109 Cal. App. 4 <sup>th</sup> 76 (2003).	
Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 4,450.00
Forum Fees	= \$11,000.00
Total Fees	= \$16,000.00
Less payments	= \$(5,950.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$10,050.00</b>

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

**ARBITRATION PANEL**

James D. Knotter	-	Public Arbitrator, Presiding Chair
Ronald M. Roth	-	Public Arbitrator
Robert A. Yates	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
James C. Knotter  
Chair, Public Arbitrator

12/28/06  
Signature Date

\_\_\_\_\_  
Ronald M. Roth  
Public Arbitrator

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

\_\_\_\_\_  
Robert A. Yates  
Non-Public Arbitrator

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

January 7, 2007  
Date of Service  
(NASD Use Only)




**ARBITRATION PANEL**

James D. Knotter	-	Public Arbitrator, Presiding Chair
Ronald M. Roth	-	Public Arbitrator
Robert A. Yates	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
James C. Knotter  
Chair, Public Arbitrator

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

  
\_\_\_\_\_  
Ronald M. Roth  
Public Arbitrator

12/27/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Robert A. Yates  
Non-Public Arbitrator

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

January 4, 2007  
\_\_\_\_\_  
Date of Service  
(NASD Use Only)

**ARBITRATION PANEL**

James D. Knotter	-	Public Arbitrator, Presiding Chair
Ronald M. Roth	-	Public Arbitrator
Robert A. Yates	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

---

James C. Knotter  
Chair, Public Arbitrator

---

Signature Date

---

Ronald M. Roth  
Public Arbitrator

---

Signature Date



---

Robert A. Yates  
Non-Public Arbitrator

12/28/06

---

Signature Date

January 4, 2007

---

Date of Service  
(NASD Use Only)