

**AWARD**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of Claimants

Ira Mike Patton and Gayle Patton

vs.

Case Number: 07-01729  
Hearing Site: Louisville, Kentucky

Name of Respondent

Wachovia Securities, LLC,  
f/k/a First Union Securities

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**NATURE OF THE DISPUTE**

Customers vs. Member

**REPRESENTATION OF PARTIES**

Ira Mike Patton and Gayle Patton ("Claimants") were represented by Jeff S. Daniel, Esq., Law Offices of Jeff Daniel, P.C., Birmingham, Alabama and James M. Patton, Esq., Patton & Veigas, P.C., Birmingham, Alabama.

Wachovia Securities, LLC, f/k/a First Union Securities ("Respondent") was represented by Beverly Jo Slaughter, Esq., Wachovia Securities, LLC, Richmond, Virginia.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 16, 2007. The Submission Agreement of Claimants was signed on or about May 30, 2007.

The Statement of Answer was filed by Respondent on or about September 17, 2007. The Submission Agreement of Respondent was signed on or about September 14, 2007, by Beverly Jo Slaughter, Vice President Counsel.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; conversion; breach of fiduciary duty; unjust enrichment; suppression of material facts; fraudulent misrepresentation; and violations of the Illinois Deceptive Trade Practices Act. The causes of action related to Claimants' allegations that Respondent wrongfully restricted access to Claimants' accounts. Claimants alleged that Respondent accepted forged requests to transfer Claimants' shares in Devin Energy Corporation stock. Claimants further alleged that Respondent should have known the transfer requests were not authentic and Respondent has not accounted for all of the missing shares.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim is barred by the doctrines of ratification, laches, unclean hands, and economic loss; the Statement of Claim is barred under the theory of respondeat superior; the Statement of Claim fails to state a claim upon which relief can be granted; Claimants assumed the risk of the transactions; Claimants failed to mitigate their damages; and the Statement of Claim is barred by the applicable statutes of limitations.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$4,246,998.00
Exemplary/Punitive Damages	\$2,107,500.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

At the Close of the hearing, Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$7,591,304.00
Exemplary/Punitive Damages	\$2,123,499.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent requested that the claims asserted against it be dismissed with prejudice and that it be awarded its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & 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 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, f/k/a First Union Securities, is liable for and shall pay to Claimant Ira Mike Patton the sum of \$5,137,359.16 in compensatory damages;
- 2.) Respondent, Wachovia Securities, LLC, f/k/a First Union Securities, is liable for and shall pay to Claimant Gayle Patton the sum of \$59,642.56 in compensatory damages;

- 3.) Respondent Wachovia Securities, LLC, f/k/a First Union Securities, is liable for and shall pay to Claimant Gayle Patton the sum of \$100,000.00 in punitive damages pursuant to Illinois case law for Respondent's wrongful retention of Gayle Patton's securities;
- 4.) Respondent, Wachovia Securities, LLC, f/k/a First Union Securities, is liable for and shall pay to Claimants, Ira Mike Patton and Gayle Patton, interest on the sums in paragraphs 1-3 above at the rate of 9% per annum from and including the date of service of this award through and including the date this award is paid in full;
- 5.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 6.) Any relief not specifically enumerated, including attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim filing fee = \$ 1,800.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings. In this matter, the member firm is Wachovia Securities, LLC, f/k/a First Union Securities.

Member surcharge	= \$ 3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00

#### **Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers or a contested motion for the issuance of a subpoena. 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) Decision on a discovery-related motion on the papers with one (1) arbitrator @ \$200.00	= \$	200.00
Claimant submitted one (1) discovery-related motion		
Two (2) Pre-hearing sessions with a single arbitrator x \$450.00	= \$	900.00
Pre-hearing conferences: June 11, 2008	1 session	
June 12, 2008	1 session	
Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$	2,400.00
Pre-hearing conference: November 26, 2007	1 session	
July 11, 2008	1 session	
Six (6) Hearing sessions x \$1,200.00	= \$	7,200.00
Hearing Dates: July 15, 2008	2 sessions	
July 16, 2008	2 sessions	
July 17, 2008	2 sessions	
<b>Total Hearing Session Fees</b>	<b>= \$</b>	<b>10,700.00</b>

The Panel has assessed \$10,700.00 of the hearing session fees to Wachovia Securities, LLC, f/k/a First Union Securities.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Allan Weiss, J.D. - Public Arbitrator, Presiding Chair  
Valerie J. Hamm - Public Arbitrator  
Bruce W. Hanks - Non-Public Arbitrator

**Concurring Arbitrators' Signatures:**

/s/ Allan Weiss, J.D.  
Allan Weiss, J.D.  
Public Arbitrator, Presiding Chair

07/30/08  
Signature Date

/s/ Valerie J. Hamm  
Valerie J. Hamm  
Public Arbitrator

07/30/08  
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/s/ Bruce W. Hanks  
Bruce W. Hanks  
Non-Public Arbitrator

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