

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Wachovia Securities, Inc. f/k/a  
Interstate/Johnson Lane Corporation

Case No. 99-00390

Name of Respondent

Raymond James & Associates, Inc.

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**REPRESENTATION OF PARTIES**

For Wachovia Securities, Inc. f/k/a Interstate/Johnson Lane Corporation ("Wachovia"), hereinafter referred to as Claimant: Terry R. Weiss, Esq. of the law firm of Long Aldridge & Norman LLP, Atlanta, Georgia and Pamela P. Warnement, Senior Vice President and Deputy General Counsel, Wachovia, Charlotte, North Carolina.

For Raymond James & Associates, Inc., ("Raymond James"), hereinafter referred to as Respondent: Gerald B. Kline, Esq. of the law firm of Sims Moss Kline & Davis LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: January 26, 1999.  
Amended Statement of Claim filed on or about: April 23, 1999.  
Claimant signed the Uniform Submission Agreement: January 26, 1999.  
Statement of Answer filed by Respondent on or about: May 10, 1999.  
Respondent signed the Uniform Submission Agreement: April 6, 1999.

**CASE SUMMARY**

Claimant asserted the following: Prior to December 1998, Liston Radney was the branch manager of the taxable fixed income institutional sales group in Atlanta, Georgia for Wachovia Securities, Inc., then known as Interstate/Johnson Lane Corporation. As of December 1998, Alexander Wallace and Suzanne Luedtke were also producing brokers in the same branch, and Courtney Hale and Tracie Brown were registered sales assistants. Mr. Radney, Mr. Wallace and Ms. Luedtke were the three top producing brokers in the Atlanta, Georgia taxable fixed income branch, a branch which generated nearly \$10,000,000.00 in gross commissions during 1998. Mr. Radney, Mr. Wallace and Ms. Luedtke all had enforceable agreements with Wachovia prohibiting them from soliciting or recruiting

Wachovia employees for a period of one year after termination of employment.

In late December 1998, Mr. Radney resigned from Wachovia and joined Raymond James. Specifically, Mr. Radney became the branch manager of, and helped to establish, Raymond James' new taxable fixed income branch in Atlanta, Georgia. Mr. Wallace resigned in early January 1999, and Ms. Luedtke, Ms. Brown and Ms. Hale all resigned in early February 1999. All five of these former employees promptly went to work in Raymond James' new taxable fixed income office in Atlanta, Georgia.

Wachovia contended that Raymond James orchestrated a "raid" of Wachovia's Atlanta, Georgia branch, using Mr. Radney to solicit and recruit the other four employees. Raymond James was or should have been aware of the non-recruitment agreements signed by Mr. Radney, Mr. Wallace and Ms. Luedtke. Raymond James nonetheless encouraged or otherwise participated with, and accepted the benefits from, the breach of the agreements by the recruiting of other Wachovia employees to become employed by Raymond James.

Respondent Raymond James denied all of Claimant's allegations, maintained that Claimant is not entitled to any damages or injunctive relief and further asserted the following: Raymond James has not acted in any fashion that has tortiously interfered with any of Claimant's alleged contractual and employment relations with its present and past employees, has not tortiously and maliciously interfered with any of Claimant's alleged business relationships with institutional fixed income clients, has not encouraged any persons to cease employment or business transactions with Claimant, has not unfairly competed and has not conducted "raiding" activities. Each of the subject departing brokers independently pursued potential employment with Raymond James and considered employment at other broker-dealers after declaring that the planned merger announcement between Claimant and Wachovia would hurt and impair their careers and impair their client dealings. Said brokers acted on their own volition free of any alleged improper solicitation, recruitment or offer efforts by Claimant's other departing employees.

Raymond James has not tortiously interfered with any of Claimant's alleged business relationships with any securities clients. Those institutional fixed income clients have had long-term relationships with Messrs. Radney and Wallace and Ms. Luedtke, which in many instances predate their dealings with Claimant. Moreover, those clients typically trade with multiple brokers, making no commitment to remain with any specific broker-dealer or salesperson. Moreover, Raymond James did not conspire against, unfairly compete against or "raid" the Claimant. Claimant knew that its bank merger would prompt material employee and client attrition. Thus, Claimant's alleged losses arise solely from the predictable business consequences of its merger decision.

Raymond James' specific defenses included the following: Claimant's failure to mitigate its alleged damages, Claimant's failure to state a claim for relief, estoppel by reason of Claimant's own conduct, absence of irreparable harm and other equitable considerations to support any type of injunction, fair competitive activity by Raymond James, lack of proximate cause or breach of legal duty, Raymond James' privileged conduct without malice,

unenforceability of restrictive covenants and alleged injury to Claimant by reason of its own conduct and actions.

### **RELIEF REQUESTED**

At the conclusion of the evidentiary hearing, Claimant requested the following: permanent injunctive relief to prohibit Raymond James from further solicitation and recruitment of Wachovia employees, particularly the employees in the fixed income securities sales departments, through Mr. Radney, Mr. Wallace, Ms. Luedtke and otherwise; an award of damages on its claims of tortious interference with contractual relations, unfair competition and raiding; an award of damages in the amount of \$10,454,700.00, based on past lost profits in the amount of \$4,808,090.00 plus future lost profits through December 2001 in the amount of \$5,646,610.00; attorneys' fees and expenses; and, that all forum fees and arbitrators' fees be borne by Raymond James.

Respondent requested that the panel enter an award in its favor upon all claims asserted against it and that Claimant take nothing; that the panel assess all filing and session fees against Claimant; and, that the panel grant it such other and further relief as is just, equitable and proper.

### **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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

All claims by the Claimant against Respondent are dismissed in all respects.

Each party shall bear their respective costs, including attorneys' fees.

All other requests for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:  
Initial claim filing fee = \$500.00

### **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. In this matter, the member firms, Wachovia and Raymond James, are parties.

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$2,000.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

No adjournments were requested during these proceedings.

### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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:

Three Pre-hearing sessions with a single arbitrator x \$300.00	= \$900.00
Pre-hearing conferences:	
January 25, 2000	1 session
March 29, 2000	1 session
April 27, 2000	1 session
One Pre-hearing session with Panel x \$600.00	= \$600.00
Pre-hearing conference: September 16, 1999	1 session
Sixteen Hearing sessions x \$600.00	= <u>\$9,600.00</u>
Hearing Dates:	
May 3, 2000	2 sessions
May 4, 2000	2 sessions
May 9, 2000	2 sessions
May 10, 2000	2 sessions
May 11, 2000	2 sessions
May 15, 2000	2 sessions
May 16, 2000	2 sessions
<u>May 23, 2000</u>	<u>2 sessions</u>
Total Forum Fees	= \$11,100.00

The Panel has assessed \$5,550.00 of the forum fees to Claimant.

The Panel has assessed \$5,550.00 of the forum fees to Respondent.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided

without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$500.00
Member Fees	= \$3,800.00
Forum Fees	= \$5,550.00
Total Fees	= \$9,850.00
<u>Less payments</u>	<u>= \$4,900.00</u>
Balance Due NASD Regulation, Inc.	= \$4,950.00

Respondent be and hereby is solely liable for:

Member Fees	= \$3,800.00
Forum Fees	= \$5,550.00
Total Fees	= \$9,350.00
<u>Less payments</u>	<u>= \$3,800.00</u>
Balance Due NASD Regulation, Inc.	= \$5,550.00

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
P. Parks Duncan  
Industry Arbitrator, Presiding Chair

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

\_\_\_\_\_/s/\_\_\_\_\_  
W. Douglas Gifford  
Industry Arbitrator

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

\_\_\_\_\_/s/\_\_\_\_\_  
Ralph Bornheim  
Industry Arbitrator

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

June 6, 2000

Date of Service (For NASD office use only)

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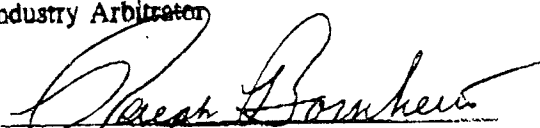
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