

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

BETTY M. JANCO	:	
	:	June Term 2004
Plaintiff,	:	
v.	:	No.: 560
	:	
FIRST UNION CAPITAL MARKETS,	:	Commerce Program
CORP., WHEAT FIRST UNION, FIRST	:	
UNION SECURITIES, INC., WACHOVIA	:	Control Nos.: 112947
CORP., WACHOVIA SECURITIES, and	:	
WILLIAM FRANCIS QUINN	:	
	:	
Defendants.	:	

**ORDER**

**AND NOW**, this 14<sup>th</sup> day of March, 2005, upon consideration of the Preliminary Objections to Plaintiff Betty M. Janco's Complaint of Defendants First Union Capital Markets Corp., Wheat First Union, First Union Securities, Inc., Wachovia Corp., Wachovia Securities, and William Francis Quinn, and the responses and replies thereto, and in accordance with the attached memorandum opinion, it is hereby **ORDERED** and **DECREED** that:

- 1) Plaintiff Betty M. Janco's claims against Defendants First Union Capital Markets Corp., Wheat First Union, First Union Securities, Inc., Wachovia Corp., Wachovia Securities, and William Francis Quinn are **COMPELLED** to arbitration before the National Association of Securities Dealers, Inc.; and
- 2) Judicial proceedings in this matter (case number 040600560) are **STAYED** pending the outcome of such arbitration.

**BY THE COURT,**

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**C. DARNELL JONES, II, J.**

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WILLIAM FRANCIS QUINN	:	
	:	
Defendants.	:	

**MEMORANDUM OPINION**

**JONES, J.**

Presently before the court are the Preliminary Objections of Defendants First Union Capital Markets Corp., Wheat First Union, First Union Securities, Inc. (together, “First Union”), Wachovia Corp., Wachovia Securities (together, “Wachovia”), and William Francis Quinn (“Quinn”) to the Complaint of Plaintiff Betty M. Janco (“Janco”).

According to the allegations in the Complaint and other filings, Wachovia is the successor-in-interest to First Union. Quinn worked for First Union and Wachovia as a financial advisor with responsibility for Janco’s investment portfolio. Quinn still works for Wachovia.

On March 4, 1999, Janco, then a sixty-nine year old widow, opened a brokerage account with First Union. She had no investment experience. Her formal education ended following high school and she previously worked as a part-time receptionist.

As part of the account-opening process, Janco signed a “Capital Resource Account - Agreement” that incorporated an arbitration provision. In addition, although

undated, she also signed a “CAP Account – CRA Application” that acknowledges receipt of another arbitration clause.<sup>1</sup> Janco invested approximately \$800,000 with First Union.

Over the next three years, as the value of her account declined, Janco called Quinn. He either failed to respond to her calls or assured her that her investments were doing fine. Defendants never offered Janco alternative investments. She lost in excess of \$600,000.

The Complaint seeks damages for breach of fiduciary duty, violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, negligent misrepresentation, breach of contract, and fraud. Defendants contend these claims are subject to arbitration and, pursuant to Pa. R.C.P. 1028(a)(6), 42 Pa. C.S. §§7304(a) and (d), and 9 U.S.C. §4, the current matter must be stayed, pending such arbitration. Janco asserts the existence of a confidential relationship between the parties makes the contract voidable; thus, there is no arbitration provision to enforce.

Generally, to determine whether a suit must proceed to arbitration requires the court to decide (1) whether a valid agreement to arbitrate exists between the parties and, if so, (2) whether the dispute involved is within the scope of the arbitration provision. Smith v. Cumberland Group Ltd., 455 Pa. Super. 276, 284, 687 A.2d 1167, 1171 (1997); Messa v. State Farm Ins. Co., 433 Pa. Super. 594, 597, 641 A.2d 1167, 1168 (1994); PBS Coal, Inc. v. Hardhat Mining, Inc., 429 Pa. Super. 372, 376-77, 632 A.2d 903, 905 (1993). Pennsylvania law advocates strict construction of arbitration agreements. Smith, at 284, at 1171. The court determines whether a matter is subject to arbitration. Ross Dev. Co. v. Advanced Bldg. Dev., Inc., 803 A.2d 194, 196 (Pa. Super. 2002). The

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<sup>1</sup> Each of these documents includes Janco’s account number and her uncontested signature.

arbitration provisions at issue in this matter are valid and encompass all the claims set forth in the Complaint. Defendants Exhs. C, E.

Certain exceptions to this general rule exist. 42 Pa. C.S. §7303. In the current matter, Janco asserts that a confidential relationship existed between herself and Defendants because she was an unsophisticated investor who trusted and relied upon Defendants to recommend and make investments for her. If true, the agreements between the parties may be voided, leaving the arbitration provisions without force, unless Defendants prove they were fair and beyond the reach of suspicion. Frowen v. Blank, 493 Pa. 137, 145, 425 A.2d 412, 416 (1981).

The court must determine whether the evidence supports a finding that there is a confidential relationship. Paone v. Dean Witter Reynolds, Inc., 789 A.2d 221, 227 (Pa. Super. 2001). Comparing Janco to other, similar litigants shows that she has not put forward sufficient facts to demonstrate the existence of a confidential relationship. In Paone, for example, the plaintiff thought the defendant had made an “honest mistake” and was not aware of the “problems” with the defendant. Paone, at 223. Here, by contrast, Janco knew the value of her account was declining and sought out Defendant Quinn, but she did nothing when he did not respond to her. In Frowen, the defendant earned the “confidence of decedent over a number of years through their close social relationship.” Frowen, at 418. In this matter, Janco had no relationship with Defendants prior to opening her account. As Janco cannot support her allegation of a confidential relationship between her and Defendants, the Defendants have no obligation to prove the fairness of the agreements. Therefore, the arbitration provisions will be upheld and this matter stayed, pending the outcome of the arbitration.

**BY THE COURT,**

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**C. DARNELL JONES, II, J.**