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

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In the Matter of the Arbitration Between:

Name of the Claimant

Samuel L. Frierson  
Samuel L. Frierson IRA

Case Number: 03-02667

Names of the Respondents

Josephthal & Co., Inc.  
Richard T. Corso  
Wachovia Securities, LLC

Hearing Site: Tampa, FL

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Samuel L. Frierson and Samuel L. Frierson IRA, hereinafter referred to as "Claimant": Emily A. Peacock, Esq., James, Hoyer, Newcomer & Smiljanich P.A., Tampa, FL.

For Respondents Josephthal & Co., Inc. ("Josephthal") and Richard T. Corso ("Corso"): Evelyn Bukchin, Counsel, Josephthal, New York, NY. Ms. Bukchin represented Respondent Corso with respect to the allegations concerning the period of time he was employed by Josephthal.

For Respondents Richard T. Corso ("Corso") and Wachovia Securities, LLC ("Wachovia"): Scott M. Murray, Vice-President, Attorney, Wachovia, Richmond, VA. Mr. Murray represented Respondent Corso with respect to the allegations concerning the period of time he was employed by Wachovia.

**CASE INFORMATION**

Statement of Claim filed on or about: April 11, 2003.

Claimant signed the Uniform Submission Agreement: February 13, 2003.

Statement of Answer filed by Respondents Josephthal and Corso on or about: July 21, 2003.

Respondent Josephthal signed the Uniform Submission Agreement: September 12, 2003.

Respondent Corso signed the Uniform Submission Agreement: September 15, 2003.

Respondent Wachovia did not file a Statement of Answer or executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: violations of the Florida Securities and Investor Protection Act; negligence; gross negligence; breach of fiduciary duty; fraudulent inducement; and, breach of contract. The causes of action relate to alleged unauthorized margin trading and the purchase of Scandia Annuity ASP and shares of securities products in Claimant's account including: Oppenheimer Information Emerging Technologies Fund Class A, ING Global

Information Technology Fund Class A, ING Global Communications Funds Class A, Zoran Corp., Finisair Corp., AOL Time Warner, Cisco Systems, Fleet Boston Financial Corp., IVillage, and Raytheon.

Unless specifically admitted in their Answer, Respondents Josephthal and Corso denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of approximately \$200,000.00, rescission, interest, punitive damages, attorneys' fees pursuant to Florida Statutes §517.211(b), costs, and such other relief the undersigned arbitrators (the "Panel") deemed appropriate under the circumstances.

Respondents Josephthal and Corso requested dismissal of the Statement of Claim, expungement, and that costs, expenses and disbursements be assessed against Claimant.

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

On or about September 17, 2003, Claimant advised NASD Dispute Resolution that he reached a settlement with Respondents Wachovia and Corso. Claimant dismissed his claims against Respondent Wachovia, with prejudice. Claimant dismissed his claims, with prejudice, against Respondent Corso for the period of time he was employed by or served as an agent and/or representative of Respondent Wachovia.

Respondent Wachovia did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the Panel on all issues submitted.

The parties 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:

Respondent Josephthal is liable on the claim of suitability and shall pay to Claimant compensatory damages in the sum of \$15,000.00, pre-judgment interest specifically excluded.

Claimant's claims for relief pursuant to the Florida Securities and Investor Protection Act and Florida Statutes §517.211(b) are denied.

Respondent Josephthal is liable and shall pay to Claimant the sum of \$225.00 representing partial reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Respondent Corso is liable for the time he was employed at Respondent Josephthal and shall pay

to Claimant the sum of \$75.00 representing reimbursement of the balance of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

### **FEES**

Pursuant to 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

#### **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, Respondents Josephthal and Wachovia are member firms and parties. Respondent Wachovia was dismissed from this matter prior to the assessment of the hearing process fee.

##### **Respondent Josephthal:**

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

##### **Respondent Wachovia:**

Member surcharge	= \$1,700.00
<u>Pre-hearing process fee</u>	<u>= \$ 750.00</u>
Total Member Fees	= \$2,450.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were granted during these proceedings for which fees were assessed.

#### **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 assessed during these proceedings.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. 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	= \$1,125.00
Pre-hearing conference: December 4, 2003 1 session	

Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: July 21, 2004 2 sessions	
July 22, 2004 2 sessions	

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Total Forum Fees	= \$5,625.00
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The Panel has assessed \$4,218.75 of the forum fees to Respondent Josephthal.

The Panel has assessed \$1,406.25 of the forum fees to Respondent Corso.

**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 during this proceeding.

**Fee Summary**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Josephthal is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 4,218.75
<u>Total Fees</u>	= \$ 9,418.75
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 4,218.75

Respondent Wachovia is solely liable for:

<u>Member Fees</u>	= \$ 2,450.00
<u>Total Fees</u>	= \$ 2,450.00
<u>Less payments</u>	= \$ 2,450.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Corso is solely liable for:

<u>Forum Fees</u>	= \$ 1,406.25
<u>Total Fees</u>	= \$ 1,406.25
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,406.25

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

**ARBITRATION PANEL**

Laurent Taylor, MBA	-	Public Arbitrator, Presiding Chairperson
Michael J. Buhr	-	Public Arbitrator
Douglas Scott Knehr, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Laurent Taylor, MBA  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/  
Michael J. Buhr  
Public Arbitrator

Signature Date

/s/  
Douglas Scott Knehr, Esq.  
Non-Public Arbitrator

Signature Date

August 4, 2004  
Date of Service (For NASD Dispute Resolution office use only)

Arbitration No. 03-02667

Award Page 5 of 5

Respondent Corso is solely liable for:

<u>Forum Fees</u>	= \$ 1,406.25
<u>Total Fees</u>	= \$ 1,406.25
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,406.25

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Michael J. Buhr	-	Public Arbitrator
Douglas Scott Knehr, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Laurent Taylor, MBA  
Public Arbitrator, Presiding Chairperson

7/31/04  
Signature Date

Michael J. Buhr  
Public Arbitrator

Signature Date

Douglas Scott Knehr, Esq.  
Non-Public Arbitrator

Signature Date

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

Arbitration No. 03-02667

Award Page 5 of 5

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Michael J. Buhr	-	Public Arbitrator
Douglas Scott Knehr, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Laurent Taylor, MBA  
Public Arbitrator, Presiding Chairperson

Signature Date

Michael J. Buhr  
Public Arbitrator

8/2/04  
Signature Date

Douglas Scott Knehr, Esq.  
Non-Public Arbitrator

Signature Date

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

JUL 30. 2004 4:57PM Resolution NASD BOCA RATON

NO. 465 P. 6

Arbitration No. 03-02567

Award Page 5 of 5

Respondent Corso is solely liable for:

Forum Fees	= \$ 1,406.25
Total Fees	= \$ 1,406.25
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,406.25

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Laurent Taylor, MBA	-	Public Arbitrator, Presiding Chairperson
Michael J. Buhr	-	Public Arbitrator
Douglas Scott Knehr, Esq.	-	Non-Public Arbitrator


**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Laurent Taylor, MBA  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Michael J. Buhr  
Public Arbitrator

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

  
\_\_\_\_\_  
Douglas Scott Knehr, Esq.  
Non-Public Arbitrator

8-3-04  
\_\_\_\_\_  
Signature Date

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