

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimants

John Joppich and Kathy Joppich

and

Case Number: 04-02277

Hearing Site: Milwaukee, Wisconsin

Respondents

Wachovia Securities, LLC and  
Mark T. Gierl

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**NATURE OF DISPUTE**

Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

John Joppich and Kathy Joppich ("Claimants") were represented by James Bolt, Esq., located in New Berlin, Wisconsin.

Wachovia Securities, LLC ("Wachovia") and Mark T. Gierl, ("Gierl") ("Respondents") or ("Wachovia") and ("Gierl") were represented by Miriam G. Bahcall, Esq., of Ungaretti & Harris, located in Chicago, Illinois.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 1, 2004. Claimants signed the Uniform Submission Agreements on July 8, 2004.

The Joint Statement of Answer was filed by Respondents on or about July 23, 2004. Wachovia signed the Uniform Submission Agreement on July 8, 2004. Mark T. Gierl signed the Uniform Submission Agreement on or about June 30, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: violation of Wisconsin Statute Sec. 551.31 (6), 551.44, and Wisconsin Administrative Code 4.06; Misrepresentation; breach of fiduciary duty; and violation of Wisconsin Statute 946.83.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: assumption

of the risks; contributory negligence; failure to state a claim upon which relief may be granted; failure to mitigate damages; unjust enrichment; comparative fault; contribution; and indemnity.

Claimant's claims are based on Respondents alleged investment of all almost their retirement funds in high risk stocks rather than the fixed income asset allocation that they anticipated.

### **RELIEF REQUESTED**

Claimant requested an unspecified amount of compensatory damage, damages.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

On May 2, 2005 the parties submitted post-hearing submissions in the form of written closing statements. On May 12, 2005 the Panel rendered its decision regarding the hearing and the post-hearing submissions.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, Wachovia Securities, LLC and Mark T. Gierl , are jointly and severally liable for and shall pay to Claimants, John Joppich and Kathy Joppich the sum of \$86,864.00 in compensatory damages, including interest at in the amount of 11,330.00 ( %5) which shall begin to accrue on January 1, 2000 and shall cease to accrue on January 1, 2003. The authority for the interest is Wisconsin State Statute;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and,
- 3.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **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 = \$250.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Wachovia Securities, L.L.C.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

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

The Arbitration 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:

One (1) Pre-hearing sessions with a single arbitrator x \$ 450.00	= \$ 450.00
Pre-hearing conference: December 30, 2004	1 session

One (1) Pre-hearing session with Panel x \$ 1000.00	= \$1,000.00
Pre-hearing conference: September 16, 2004	1 session

Nine (9) Hearing sessions x \$1,000.00	= \$9,000.00
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Hearing Dates:	April 12, 2005	2 sessions
	April 13, 2005	2 sessions
	April 14, 2005	2 sessions
	April 15, 2005	2 sessions
	May 2, 2005	1 session

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Total Forum Fees	= \$10,450.00
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The Arbitration Panel has assessed \$5,225.00 of the forum fees to John Joppich and Kathy Joppich.

The Arbitration Panel has assessed \$5,225.00 of the forum fees jointly and severally to Wachovia Securities, LLC and Mark T. Gierl.

### **Fee Summary**

Claimants John Joppich and Kathy Joppich are liable for:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 5,225.00
Total Fees	= \$ 5,475.00
Less payments	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$ 4,225.00

Respondent, Wachovia Securities, LLC, is liable for:

Member Fees	= \$4,450.00
Total Fees	= \$4,450.00
Less payments	= \$4,450.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Wachovia Securities, LLC and Mark T. Gierl.  
are jointly and severally liable for:

Fee Type	= \$5,225.00
Total Fees	= \$5,225.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$5,225.00

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

### **ARBITRATION PANEL**

Lawrence Tepper, CPA - Public Arbitrator, Presiding Chair  
J. Miles Goodwin Esq - Public Arbitrator  
Roy Clyde George - Non-Public Arbitrator

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**Concurring Arbitrators:**

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Lawrence Tepper, CPA  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
J. Miles Goodwin Esq.  
Public Arbitrator

5/26/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Roy Clyde George  
Non-Public Arbitrator

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

5/26/05  
\_\_\_\_\_  
Date of Service (For NASD office use only)

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Arbitration No. 04-02277  
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Concurring Arbitrators:

Lawrence Tepper, CPA  
Public Arbitrator, Presiding Chair

Signature Date

J. Miles Goodwin Esq.  
Public Arbitrator

Signature Date

  
Roy Clyde George  
Non-Public Arbitrator

5/26/05  
Signature Date

Date of Service (For NASD office use only)

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Concurring Arbitrator:

Lawrence Tepper

Lawrence Tepper, CPA  
Public Arbitrator, Presiding Chair

5/25/05

Signature Date

Roy Clyde George  
Public Arbitrator

Signature Date

J. Miles Goodwin, Esq.  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)