

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

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In the Matter of the Arbitration Between:

Nubia Garrido (Claimant) v. Quest Capital Strategies, Inc. and Sean P. Brown  
(Respondents)

Case Number: 02-05845

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant, Nubia Garrido, hereinafter referred to as "Claimant": Marcella Silverman, Esq., Lincoln Square Legal Services, Inc., New York, NY.

Respondent, Quest Capital Strategies, Inc. ("Quest"): Ernest Edward Badway, Esq., Saiber Schlesinger Satz & Goldstein, LLC, Newark, NJ. Previously represented by: Richard Pali, Esq., Points and Authorities, et al, Woodland Hills, CA.

Respondent Sean B. Brown ("Brown") did not make an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: September 27, 2002.

Claimant signed the Uniform Submission Agreement: June 12, 2002.

Statement of Answer, Counterclaims, and Crossclaims filed by Respondent(s), (Names), on or about: December 6, 2002.

Quest signed the Uniform Submission Agreement: December 17, 2002.

Respondent Brown did not file a Statement of Answer or sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; fraud; and failure to supervise. Claimant's claims involved unspecified stocks, mutual funds, and options.

Unless specifically admitted in its Answer, Counterclaims, and Crossclaims, Quest denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, Quest asserted the following causes of action: abuse of process; and malicious prosecution. In its Crossclaim, Quest asserted that Respondent Brown mismanaged Claimant's account; and breach of fiduciary duty and standard of care.

### **RELIEF REQUESTED**

Claimant requested an award from Respondents Brown and Quest, reasonable costs and fees, plus such other relief as the arbitrator deems just, proper, and equitable under the circumstances. Damages are allocated as follows:

1. Losses at Quest (jointly and severally from Respondents Brown and Quest) - \$9,500.00
2. Losses at Josephthal (from Respondent Brown) - \$500.00

In its Answer, Counterclaims, and Crossclaims, Quest requested that the claims against Quest be dismissed in their entirety; that an award be entered against Claimant for all forum and hearing fees, and all other expenses and costs incurred in this arbitration; an award for indemnification and contribution from Respondent Brown, if Quest is found liable for all damages, costs, and attorneys' fees; an award on its Counterclaims for compensatory and punitive damages; and all such other and further relief that the Arbitration Panel may deem just, proper, and equitable in the circumstances.

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

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent Brown has been properly served with the Statement of Claim and received due notice of the hearing and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

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

At the hearing, Claimant made a motion to compel further discovery. After due consideration, the Panel denied said Motion. Claimant also made a motion to enter default judgment against Brown. The Panel denied the Claimant's Motion for Default.

At the hearing, Quest moved to dismiss the claims. After considering all arguments from the parties, the Panel determined to deny Quest's Motion for Dismissal of the Claim.

At the hearing, Claimant exercised her right to refuse to testify about certain income and net worth matters on the grounds that she was asserting her Fifth Amendment privilege.

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, and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Quest are hereby denied in their entirety.
2. Brown is hereby solely liable for and shall pay to Claimant compensatory damages in the amount of \$4,000.00.
3. Quest's Counterclaims are hereby denied in their entirety.
4. Brown is hereby solely liable and shall pay to Quest compensatory damages in the amount of \$6,000.00, pursuant to the contract (CL. EX. 29).
5. Any and all relief not specifically addressed herein is 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	= \$ 75.00
Counterclaim 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Quest Capital Strategies, Inc. is a party.

Member surcharge	= \$ 325.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

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

The Panel has assessed forum fees for each session conducted. 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.

The Panel has assessed fifty percent (50%) of the forum fees against the Claimant and fifty percent (50%) of the forum fees against Respondent Brown. In accordance with Rule 10332(c) of the NASD Code of Arbitration Procedure, Claimant is assessed forum fees at a rate of \$250.00 per hearing session and Brown is assessed forum fees at a rate of \$1,000.00 per hearing session. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$250.00	= \$ 250.00
Pre-hearing conference: July 1, 2003 1 session	
Two (2) Pre-hearing sessions with Panel @ \$250.00	= \$ 500.00
Pre-hearing conferences: May 14, 2003 1 session	
October 3, 2003 1 session	
Four (4) Hearing sessions @ \$250.00	= \$1,000.00
Hearing Dates: October 9, 2003 2 sessions	
October 10, 2003 2 sessions	
Total Forum Fees	= \$1,750.00

*1. The Panel has assessed \$875.00 of the forum fees against Claimant.*

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: July 1, 2003 1 session	
Two (2) Pre-hearing sessions with Panel @ \$1,000.00	= \$2,000.00
Pre-hearing conferences: May 14, 2003 1 session	
October 3, 2003 1 session	
Four (4) Hearing sessions @ \$1,000.00	= \$4,000.00
Hearing Dates: October 9, 2003 2 sessions	
October 10, 2003 2 sessions	
Total Forum Fees	= \$6,450.00

*1. The Panel has assessed \$3,225.00 of the forum fees against Brown.*

#### Fee Summary

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 75.00
Forum Fees	= \$ 875.00
Total Fees	= \$ 950.00
Less payments	= \$ 325.00
Balance Due NASD Dispute Resolution	= \$ 625.00

2. Quest is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
<u>Member Fees</u>	= <u>\$ 3,275.00</u>
Total Fees	= \$ 3,775.00
<u>Less payments</u>	= <u>\$ 5,525.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,750.00

3. Brown is solely liable for:

<u>Forum Fees</u>	= <u>\$3,225.00</u>
Total Fees	= \$3,225.00
<u>Less payments</u>	= <u>\$ .00</u>
Balance Due NASD Dispute Resolution	= \$3,225.00

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

Norris D. Wolff, Esq.	-	Public Arbitrator, Presiding Chair
John R. Mitchell, CPA	-	Public Arbitrator
Carl W. Klemme	-	Public Arbitrator

Concurring Arbitrators' Signatures

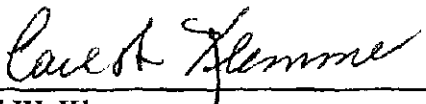
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

\_\_\_\_\_  
Norris D. Wolff, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
John R. Mitchell, CPA  
Public Arbitrator

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

  
\_\_\_\_\_  
Carl W. Klemme  
~~Not~~ Public Arbitrator

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

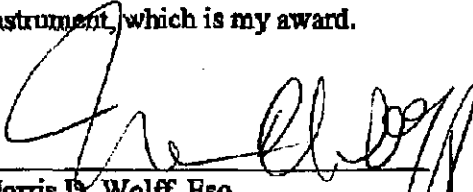
November 28, 2003  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Norris D. Wolff, Esq.	-	Public Arbitrator, Presiding Chair
John R. Mitchell, CPA	-	Public Arbitrator
Carl W. Klemme	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

  
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Norris D. Wolff, Esq.  
Public Arbitrator, Presiding Chairperson

10/28/03  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
John R. Mitchell, CPA  
Public Arbitrator

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

\_\_\_\_\_  
Carl W. Klemme  
Non-Public Arbitrator

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

November 28, 2003  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)