

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

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In the Matter of the Arbitration Between

Claimant

Marilyn Bost

v.

02-06381  
Denver, Colorado

Respondents

Presidential Brokerage, Inc.,  
James B. Campbell, Michael W. Speer,  
Daniel G. Lempe, and John A. DuPriest

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Nature of Dispute: Customer v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Marilyn Bost ("Claimant") was represented by Robert A. Lees, Esq., of Robert A. Lees & Associates, Castle Rock, Colorado.

Presidential Brokerage, Inc. ("Presidential Brokerage"), James B. Campbell ("Campbell"), Michael W. Speer ("Speer"), Daniel G. Lempe ("Lempe") and John A. DuPriest ("DuPriest"), hereinafter collectively referred to as "Respondents," were represented by William D. Nelson, Esq., of Rothgerber, Johnson & Lyons, LLP, Denver, Colorado.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 23, 2002. The Submission Agreement of Claimant was signed on or about October 11, 2002.

The Statement of Answer was filed jointly by Respondents, Presidential Brokerage, Inc., James B. Campbell, Michael W. Speer, Daniel G. Lempe and John A. DuPriest, on or about March 3, 2003. The Submission Agreement of Respondent, Presidential Brokerage, Inc., was signed on or about February 28, 2003. The Submission Agreement of Respondent, James B. Campbell, was signed on or about February 28, 2003. The Submission Agreement of Respondent, Michael W. Speer, was signed on or about February 28, 2003. The Submission Agreement of Respondent, Daniel G. Lempe, was signed on or about February 27, 2003. The Submission Agreement of Respondent, John A. DuPriest, was signed on or about February 28, 2003.

Claimant filed a Motion to Depose on or about July 2, 2004. Respondents' filed a Response to the Motion to Depose on or about July 7, 2004. Claimant filed a Reply to the Motion to Depose on or about July 12, 2004.

### **CASE SUMMARY**

Claimant asserted causes of action including the following: breach of the standard of care, suitability, omissions, unauthorized trades, misrepresentations and failure to supervise. The causes of action related to Claimant's allegation that upon transferring her retirement funds to Presidential, Respondents engaged in an investment strategy concentrating in various unspecified high-risk and speculative securities. Claimant alleged that this strategy was in contrast to her stated investment objectives and previous investment experience. Claimant also alleged that Campbell made unauthorized trades without her consent and that Respondents failed to supervise Campbell's actions or protect her from losses accruing in her account.

Respondents denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: the claims asserted in the Statement of Claim do not state a claim under the various laws pled; Claimant cannot prevail on her claims due to the absence of causation; Campbell, at all times, conducted himself in accordance with all applicable state, federal, exchange and SRO rules and regulations and satisfied all duties he may have owed to Claimant; Claimant failed to mitigate her damages; the claims asserted in the Statement of Claim are barred, in whole or in part, by the doctrines of waiver, estoppel and/or ratification; and Respondents are not liable to Claimant in any amount because, at all times relevant to this arbitration, they acted properly, in good faith and in a commercially reasonable manner.

### **RELIEF REQUESTED**

Claimant requested an award of \$110,840.66 in compensatory damages, plus punitive damages, interest, attorneys' fees, costs and any other relief the panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested that this matter be expunged from Speer's, Lempe's, DuPriest's and Campbell's permanent registration records maintained by the Central Registration Depository ("CRD").

### **OTHER ISSUES CONSIDERED & DECIDED**

On or about July 26, 2004, the panel denied Claimant's Motion to Depose.

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 originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

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

1. Claimant's claims, each and all, are denied and dismissed with prejudice in their entirety;
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice; and
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 300

#### **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. In this matter, the member firm is Presidential Brokerage, Inc.

Member surcharge = \$ 1,700  
Pre-hearing process fee = \$ 750  
Hearing process fee = \$ 2,750

#### **Adjournment Fees**

Adjournments granted during these proceedings:

August 23-27, 2004 (Adjournment requested by Claimant)  
Fee Assessed by the Panel = \$ 1,125

August 17-19, 2005 (Adjournment requested by Claimant)  
Fee Assessed by the Panel = \$ 1,500

**Three-Day Cancellation Fee** – Fees apply when a hearing on the merits is postponed or settled within three business days of the start of a scheduled hearing session.  
(August 17-19, 2005 dates were adjourned at the August 16, 2005 hearing) = \$ 300

**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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing session with Panel x \$ 1,125 = \$ 2,250

|                          |            |           |
|--------------------------|------------|-----------|
| Pre-hearing conferences: | 11/13/2003 | 1 session |
|                          | 02/18/2005 | 1 session |

Five (5) Hearing sessions with Panel x \$ 1,125 = \$ 5,625

|                |            |            |
|----------------|------------|------------|
| Hearing Dates: | 08/16/2005 | 1 session  |
|                | 10/11/2005 | 2 sessions |
|                | 10/12/2005 | 2 sessions |

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Total Forum Fees = \$ 7,875

The Arbitration Panel has assessed \$ 7,875 of the forum fees jointly and severally to Presidential Brokerage, Inc., James B. Campbell, Michael W. Speer, Daniel G. Lempe and John A. DuPriest.

**FEE SUMMARY**

Claimant, Marilyn Bost, is liable for:

|  |            |
|--|------------|
| <u>Initial Filing Fee</u>                  | = \$ 300   |
| <u>Adjournment Fees</u>                    | = \$ 2,625 |
| <u>Three-Day Cancellation Fee</u>          | = \$ 300   |
| <u>Total Fees</u>                          | = \$ 3,225 |
| <u>Less payments</u>                       | = \$ 1,425 |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 1,800 |

Respondent, Presidential Brokerage, Inc., is liable for:

|  |            |
|--|------------|
| <u>Member Fees</u>                         | = \$ 5,200 |
| <u>Total Fees</u>                          | = \$ 5,200 |
| <u>Less payments</u>                       | = \$ 5,200 |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 0     |

Respondents, Presidential Brokerage, Inc., James B. Campbell, Michael W. Speer, Daniel G. Lempe and John A. DuPriest, are jointly and severally liable for:

|  |            |
|--|------------|
| <u>Forum Fees</u>                          | = \$ 7,875 |
| <u>Total Fees</u>                          | = \$ 7,875 |
| <u>Less payments</u>                       | = \$ 0     |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 7,875 |

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

**ARBITRATION PANEL**

Peter D. Bowes - Public Arbitrator, Presiding Chair  
William F. Skewes, Esq. - Public Arbitrator  
Cletus E. Byrne, Jr. - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Peter D. Bowes  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
William F. Skewes, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Cletus E. Byrne, Jr.  
Non-Public Arbitrator

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

10/21/05  
Date of Service (NASD use only)

**Respondent, Presidential Brokerage, Inc., is liable for:**

|  |                   |
|--|-------------------|
| <b>Member Fees</b>                         | <b>= \$ 5,200</b> |
| <b>Total Fees</b>                          | <b>= \$ 5,200</b> |
| <b>Less payments</b>                       | <b>= \$ 5,200</b> |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 0</b>     |

Respondents, Presidential Brokerage, Inc., James B. Campbell, Michael W. Spear, Daniel G. Lempe and John A. DuPriest, are jointly and severally liable for:

|  |                   |
|--|-------------------|
| <b>Forum Fees</b>                          | <b>= \$ 7,875</b> |
| <b>Total Fees</b>                          | <b>= \$ 7,875</b> |
| <b>Less payments</b>                       | <b>= \$ 0</b>     |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 7,875</b> |

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Public Arbitrator, Presiding Chair

10-20-05  
Signature Date

**William F. Skewes, Esq.**  
**Public Arbitrator**

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**Cletus E. Byrne, Jr.**  
**Non-Public Arbitrator**

**Signature Date**

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|                                     |            |
|-------------------------------------|------------|
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| Total Fees                          | = \$ 7,875 |
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