

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Daniel V. Griffin

and

95-04091

Name of Respondent

Presidential Brokerage, Inc.

Neal Walls

Daniel G. Lempe

REPRESENTATION OF PARTIES

Daniel V. Griffin ("**Claimant**") was represented by Noel Guardi, Esq., Denver, Colorado.

Presidential Brokerage, Inc. ("**Respondent Presidential**") Neal Walls ("**Respondent Walls**") and Daniel G. Lempe ("**Respondent Lempe**") (collectively as "**Respondents**") were represented by Gregg A. Johnson, Esq., San Diego, California.

CASE INFORMATION

The Statement of Claim was filed on or about August 25, 1995. Submission Agreement of Claimant Daniel V. Griffin was signed on August 23, 1995.

Statement of Answer was filed by Respondents Presidential Brokerage, Inc., Neal Walls and Daniel G. Lempe on or about October 16, 1995. Submission Agreement of Respondent Presidential Brokerage, Inc. was signed on October 12, 1995 by Daniel G. Lempe. Submission Agreement of Respondent Neal Walls was signed on October 12, 1995. Submission Agreement of Respondent Daniel G. Lempe was signed on September 8, 1995.

HEARING INFORMATION

Pre-hearing conferences were held on October 29, 1996 for one (1) session and January 28, 1997 for one (1) session with James B. Eichberg, presiding.

The hearing was held on Tuesday, February 4, 1997 for two (2) sessions, Wednesday, February 5, 1997 for two (2) sessions and Thursday, February 6, 1997 for two (2) sessions in Denver, Colorado for a total of six (6) sessions.

CASE SUMMARY

Claimant alleged that Respondents engaged in securities fraud, churning, breach of fiduciary duty, negligence, and negligence supervision. Specifically, Claimant alleged that during the time period from March 1, 1994 through February 28, 1995 purchases and sales in his account totaled in excess of \$26,000,000; the average equity invested in the account was \$150,000 per month; sales charges of approximately \$115,000, including commissions, mark ups, mark downs, and miscellaneous fees; and the Claimant suffered losses of approximately \$70,000.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that the Claimant was and is a professional trader who conducts his business through several different brokerage firms where he obtains information and advice that he filters through his knowledge and vast information services before he makes any decisions. Specifically, Respondents stated that the Claimant was and is an extremely sophisticated investor who actively utilized a number of sophisticated and complex tools to assist in his investment decisions. Claimant used various computerized trading systems and subscribed to a number of investment and trading services. Respondents further stated that in this case, none of the three elements for a churning claim exist. Respondents stated that the Claimant's active trading was consistent with his objectives as a trader who traded securities for his livelihood; Respondent Walls did not exercise control over the account; and the broker acted solely with the advice and consent of the Claimant.

With respect to the allegation of lack of supervision; Respondents denied ever receiving any complaints from Griffin as to turnover in his account, churning or excessive commissions prior to the letter from Claimant's attorney dated May 15, 1995. Respondents asserted numerous affirmative defenses.

RELIEF REQUESTED

Claimant requested an award against Respondents, jointly and severally, for such legal relief as the arbitrators deem appropriate, including, but not limited to sales charges of Respondent Presidential, the losses on the transactions in the account, actual damages, interest at the statutory rate, costs and reasonable attorneys' fees. At the hearing, Claimant presented testimony and evidence requesting damages of \$122,710.75 representing commissions and broker mark ups and trading losses totaling \$55,244.34.

Respondents respectfully request that the Statement of Claim be dismissed and attorneys' fees, costs and disbursements be assessed against Claimant.

At the hearing, Claimant requested that the costs of the pre-hearings conferences conducted in this matter be assessed against the Respondents because of Respondents delays in producing documents.

OTHER ISSUES CONSIDERED & DECIDED

At the time when the parties were questioned whether they had a full and fair opportunity to be heard, Claimant's attorney responded in the negative and refused and declined to present closing argument. Claimant and his attorney then informed the panel that they were leaving the hearing. At that time the hearing was closed by the arbitration panel without closing argument from any party.

The Claimant did not agree 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 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. The claims asserted in this matter shall be and hereby are denied in their entirety.
2. Each party shall bear its own costs, expenses and fees, including attorneys' fees incurred in this matter not specifically enumerated herein.

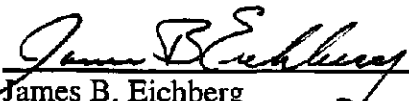
FORUM FEES

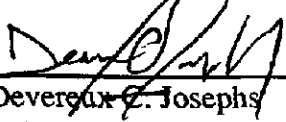
Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$300 and six (6) sessions x \$750 = \$5,100 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.


Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Daniel V. Griffin. The pre-hearing session forum fees totaling \$600 are assessed as follows: \$150 from Claimant Daniel V. Griffin and \$450 from Respondents Presidential Brokerage, Inc., Neal Walls and Daniel G. Lempe jointly and severally. The hearing session fees totaling \$4,500 are assessed as follows: \$2,250 from Claimant Daniel V. Griffin leaving a balance due of \$1,750 and \$2,250 from Respondents Presidential Brokerage, Inc., Neal Walls and Daniel G. Lempe jointly and severally.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **assess** the non-refundable member surcharge in the amount of \$300 against Presidential Brokerage, Inc.

The NASD Regulation, Inc. Office of Dispute Resolution shall **retain** postponement fees in the total amount of \$1,000 previously deposited by Respondent Presidential Brokerage, Inc. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**


James B. Eichberg
Public Arbitrator, Presiding Chair


Devereux C. Josephs
Public Arbitrator


Raymond N. Mitchell, Jr.
Industry Arbitrator

Dated: 2/6/97

2/6/97

2/6/97