

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Patricia Angel

Case No. 99-02378

Name of Respondent

American Fronteer Financial Corp.

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**REPRESENTATION OF PARTIES**

For Patricia Angel ("Claimant"): Philip J. Snyderburn, Esq. of the Law Offices of Snyderburn, Rishoi, and Swann, Winter Park, Florida.

For American Fronteer Financial Corp. ("Respondent"): Carla B. Minckley, Esq. of Birge and Minckley, P.C., Denver, Colorado.

**CASE INFORMATION**

Statement of Claim filed on or about: May 21, 1999.

Claimant signed the Uniform Submission Agreement on: May 17, 1999.

Statement of Answer filed by Respondent on or about: September 7, 1999.

Respondent signed the Uniform Submission Agreement on: January 27, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) fraudulent inducement; 2) breach of fiduciary duty; 3) negligence; and 4) breach of contract. The causes of action relate to the hypothecation and liquidation of Disney stock in Claimant's account with Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Claimant failed to state a claim upon which relief may be granted; 2) Claimant is barred from recovery by the doctrines of waiver, ratification, estoppel, and laches; 3) Claimant assumed the risks of her investments; 4) Claimant is barred from recovery by her written representations upon which Respondent relied; 5) Claimant is barred from recovery by the statute of limitations; 6) Claimant's damages should be set-off and reduced by the proportionate fault, contributory negligence and comparative fault of all responsible parties or non-parties to this proceeding; 7) Claimant's damages should be set-off and reduced by profits and distributions received from Claimant's investments; 8) Claimant is barred from recovery because she did not reasonably rely upon a material misrepresentation or omission of fact in connection with the purchase or sale of her investments; 9) Claimant's damages, if any, for excessive trading should be

limited to transactions which the Panel finds excessive and should be evaluated in accordance with the Report of the Special Study of the Options Markets to the Securities and Exchange Commission dated December 22, 1978; 10) Claimant's damages for trading losses are not recoverable for excessive trading; and 11) Claimant's damages, if any, for claims other than excessive trading should be limited to trading losses and should exclude commissions for non-excessive transactions.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$81,356.00, interest, costs, and punitive damages in an amount to be determined by the Panel.

Respondent requested dismissal of the Statement of Claim, costs, expert witness fees, attorneys' fees, and such other relief the Panel deemed just and proper.

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

The parties at the evidentiary hearing 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, 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:

1. The Panel finds Respondent liable for churning and unsuitable trading in Claimant's account.
2. Respondent is liable and shall pay to Claimant the sum of \$48,000.00, pre-judgment interest specifically excluded.
3. Claimant's request for an award of punitive damages is denied.
4. All other requests for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:  
Initial claim filing fee = \$225.00

### **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. In this matter, the member firm is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

### **Forum Fees and Assessments**

The 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 session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: May 15, 2000 1 session	

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: February 29, 2000 1 session	

Five (5) Hearing sessions x \$750.00	= \$3,750.00
Hearing Dates: June 6, 2000 2 sessions	
June 7, 2000 2 sessions	
June 8, 2000 1 session	

Total Forum Fees	= \$4,950.00
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The Panel has assessed the total forum fees of \$4,950.00 to Respondent.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$225.00
Total Fees	= \$225.00
<u>Less payments</u>	<u>= \$225.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Respondent be and hereby is solely liable for:

Member Fees	= \$3,100.00
Forum Fees	= \$4,950.00
Total Fees	= \$8,050.00
<u>Less payments</u>	<u>= \$3,100.00</u>
Balance Due NASD Regulation, Inc.	= \$4,950.00

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures**

/s/  
Irvin H. Blumfield, M.D.  
Public Arbitrator, Presiding Chair

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

/s/  
Lusia A. Archiletti  
Public Arbitrator

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

/s/  
Nancy E. Gorski, C.F.P.  
Industry Arbitrator

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

July 5, 2000

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

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Public Arbitrator, Presiding Chair

6/19/00  
Signature Date

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Lusia A. Archiletti  
Public Arbitrator

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Signature Date

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Public Arbitrator

6/29/00

Signature Date

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Nancy E. Gorski, C.F.P.

Industry Arbitrator

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Signature Date

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RECEIVED

JUL 3 2000

FL ARBITRATION

RECEIVED

JUL 5 2000

FL ARBITRATION

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