

**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

Madeline Baugh  
Anna Baugh  
Colin Baugh  
Madeline Baugh IRA  
Margaret Polito IRA  
Margaret Polito

Case Number: 14-02450

vs.

Respondents

Centaurus Financial, Inc.  
First Allied Securities, Inc.

Hearing Site: Albuquerque, New Mexico

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Nature of the Dispute: Customers vs. Members

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Madeline Baugh, Anna Baugh, Colin Baugh, Madeline Baugh IRA, Margaret Polito IRA and Margaret Polito, hereinafter collectively referred to as "Claimants": Adam J. Weinstein, Esq., Gana LLP, New York, New York.

For Respondent Centaurus Financial, Inc. ("Centaurus"): Chad Weaver, Esq. and Matthew D. Klafter, Esq., Edgerton & Weaver, LLP, Hermosa Beach, California.

For Respondent First Allied Securities, Inc. ("First Allied"): Michael Schwartzberg, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: August 5, 2014.

Claimants signed the Submission Agreement: August 5, 2014.

Statement of Answer filed by First Allied on or about: October 17, 2014.

First Allied signed the Submission Agreement: October 24, 2014.

Statement of Answer filed by Centaurus on or about: January 7, 2015.

Centaurus signed the Submission Agreement: January 7, 2015.

### **CASE SUMMARY**

Claimants asserted the following causes of action: suitability; fraudulent or negligent material misrepresentations and omission of material information; violation of FINRA Rules 2010, IM-2310-2, and 2020; violation of the New Mexico Unfair Practices Act; violation of Section 11 of the Securities Act of 1933; and failure to supervise. The causes of action relate to Claimants' investments in various securities such as Inland American Real Estate Trust, Phillips Edison – ARC Shopping Center Real Estate Investment Trust, Carter Validus Mission Critical Real Estate Investment Trust and Cole Credit Property Trust IV.

Unless specifically admitted in its Answer, First Allied denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in its Answer, Centaurus denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested:

1. Compensatory damages for a sum of \$1,500,000.00 or alternatively, recessionary damages;
2. Statutory damages;
3. Interest at the statutory rate;
4. Attorneys' fees;
5. Expert fees;
6. Forum fees;
7. Punitive damages; and
8. Any and all other relief available, in law or equity or otherwise, which may be granted to Claimants.

In its Statement of Answer, First Allied requested:

1. An award in favor of First Allied;
2. Dismissal and denial of the Statement of Claim in its entirety;
3. Fees and costs;
4. Attorneys' fees; and
5. Such other and further relief as the Panel deems just and proper.

In its Statement of Answer, Centaurus requested:

1. Denial of Claimants' claims for relief;
2. Expert witness fees, costs and disbursements;
3. Assessment of FINRA forum fees against Claimants;
4. Expungement of this action from non-party Seyed Ahmad Hashemian's ("Hashemian") Central Registration Depository record; and
5. Such other and further relief as the Panel deems just and appropriate.

At the close of the hearing, Margaret Polito, individually and on behalf of the Margaret

Polito IRA requested damages which included case costs, expert costs and attorneys' fees. The Panel notes that the following damages claimed vary depending on the nature of the legal theory of recovery:

1. Market adjusted damages in the amount of \$2,232,740.00;
2. Alternatively, damages in the amount of \$3,450,119.00 pursuant to New Mexico Law 58-13C-509 (Securities Tendered), plus post-judgment interest under New Mexico Law at the rate of 15%; and
3. Alternatively, damages in the amount of \$5,003,218.00 pursuant to New Mexico Law 58-13C-509 (Securities Actually Tendered), plus post-judgment interest under New Mexico Law at the rate of 15%.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On June 15, 2015, Claimants' counsel notified FINRA Dispute Resolution that they settled their claims against First Allied.

The Panel notes that Claimants Madeline Baugh, Anna Baugh, Colin Baugh and Madeline Baugh IRA were not parties to the evidentiary hearing. The Panel finds that the claims of Madeline Baugh, Anna Baugh, Colin Baugh and Madeline Baugh IRA were resolved in the settlement with First Allied.

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.

### **FINDINGS**

Margaret Polito is a widow in her mid-60s. Margaret Polito's husband passed away suddenly in 2005. He was a partner in a law firm and handled all of the family finances and investments. While Margaret Polito is a well-educated woman, she did not have a high level of knowledge regarding securities and investments. Shortly after her husband's death, Margaret Polito, through her daughter, was introduced to Hashemian, a registered representative. Claimants had available approximately \$2.2 million to invest. Margaret Polito's overall investment objective was to avoid risk and have her funds prudently managed for her income, retirement needs and her grandchildren. Margaret Polito was seeking prudent predictable financial investments. At the time the relationship with Claimants began, Hashemian had an independent contractor relationship with First Allied. In or about November 2009, Hashemian left First Allied and established an independent contractor relationship with Centaurus. For the first year of his relationship with Centaurus, Hashemian was under "heightened supervision".

The issue before the Panel is solely Centaurus' duty to Margaret Polito for its actions, and/or failure to act, with regard to its acts, and those of Hashemian for which it may be held responsible, during the period Margaret Polito's investments were with Centaurus. Hashemian is not a party to this arbitration. First Allied is not a party to this arbitration, Claimants having settled with First Allied in 2015.

The Panel finds that Margaret Polito met her burden of proof that the investments Hashemian recommended while at Centaurus were not suitable and in Margaret Polito's best interests. Margaret Polito also provided sufficient evidence to meet her burden of proof to support her allegations in her Statement of Claim that the actions by Hashemian, for which Centaurus is responsible, constitute fraudulent and negligently made material misrepresentations and omitted material information in the sale of the investments to Margaret Polito.

Margaret Polito asserted at the hearing that she signed as a regular practice documents in blank. Hashemian and Centaurus denied such practice. Further, Margaret Polito asserted that Hashemian placed her in inappropriate investments with respect to her objectives and, with the signed in blank documents, had those purchases executed.

The Panel finds that Centaurus is liable for Hashemian's actions because Centaurus failed to supervise Hashemian in a proper and reasonable manner both during and subsequent to the period he was under heightened supervision.

The Panel also finds that Margaret Polito has a responsibility in this matter. Margaret Polito signed documents in blank. Margaret Polito was told at the outset, by her daughter-in-law (an individual knowledgeable in the securities industry), that Margaret Polito ought not to invest with Hashemian. Further, notwithstanding issues that arose with her investments, Margaret Polito continued the relationship with Hashemian well after she knew or should have known that there were problems.

Margaret Polito's damages claim centers on what she could have made had her money been prudently and moderately invested during the period Hashemian was her advisor and had a relationship with Centaurus. She seeks damages under provisions of New Mexico law, various common law theories, and violations of FINRA rules specifically lack of suitability in failing to have a reasonable basis for recommending a particular security or strategy.

The Panel finds that Margaret Polito's claims for the enhanced damages and enhanced interest rates available under New Mexico law are not sufficient to reach Centaurus under the facts presented in this matter.

The Panel finds that the evidence supports, and that Margaret Polito has met her burden, of establishing liability on the part of Centaurus as alleged in the Statement of Claim: lack of suitability, fraudulent and negligently made material misrepresentations and omissions of material information in the sale of investments to Margaret Polito, and violations of various FINRA rules.

The Panel further finds that Margaret Polito is not entitled to all of her claimed damages due to her own negligence, including, but not necessarily limited to the matters set forth above.

The Panel finds that Margaret Polito is entitled to damages in the total sum of \$150,000.00 to be paid within 30 days of the date of service of this Award, and if not paid, subject to New Mexico's interest rate of 8.75% per year. 56-8-4 NMSA 1978.

The Panel further finds that each party is responsible for their own attorneys' fees, expert witness fees, and expenses.

### **AWARD**

After considering the pleadings, 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. Centaurus is liable for and shall pay to Margaret Polito IRA and Margaret Polito compensatory damages in the amount of \$150,000.00.
2. Centaurus is liable for and shall pay to Margaret Polito IRA and Margaret Polito interest on the amount of \$150,000.00 at the rate of 8.75% per annum accruing from 30 days from the date of service of the Award through the date of payment of the amount of \$150,000.00.
3. Centaurus is liable for and shall pay to Margaret Polito IRA and Margaret Polito \$600.00 as reimbursement for the non-refundable portion of Claimants' initial claim filing fee.
4. Non-party Hashemian's request for expungement is denied.
5. Each party is responsible for their own attorneys' fees, expert witness fees, and expenses.
6. Any and all relief not specifically addressed herein, including punitive damages, is denied.
7. The Panel has provided an explanation of their decision in this Award. The explanation is for the information of the parties only and is not precedential in nature.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee = \$ 1,800.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### **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.

Accordingly, as a party, Centaurus Financial, Inc. is assessed the following:

Member Surcharge = \$ 2,800.00

Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,000.00

Accordingly, as a party, First Allied Securities, Inc. is assessed the following:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,000.00

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conferences: December 7, 2015 1 session	
January 21, 2016 1 session	

One (1) Pre-hearing session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: March 16, 2015 1 session	

Ten (10) Hearing sessions @ \$1,200.00/session	= \$12,000.00
Hearing Dates: April 5, 2016 2 sessions	
April 6, 2016 3 sessions	
April 7, 2016 2 sessions	
April 8, 2016 2 sessions	
May 20, 2016 1 session	

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Total Hearing Session Fees	= \$14,100.00
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The Panel has assessed \$14,100.00 of the hearing session fees to Centaurus.

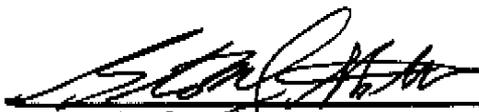
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

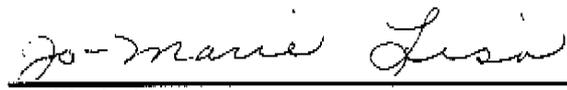
Steven M. Guttell	-	Public Arbitrator, Presiding Chairperson
Jo-Marie Lisa	-	Public Arbitrator
John Austin Darden, III	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Steven M. Guttell  
Public Arbitrator, Presiding Chairperson

6/1/16  
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Signature Date

  
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Jo-Marie Lisa  
Public Arbitrator

6/2/16  
\_\_\_\_\_  
Signature Date

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John Austin Darden, III  
Public Arbitrator

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

June 3, 2016  
Date of Service (For FINRA Dispute Resolution office use only)

**ARBITRATION PANEL**

Steven M. Guttell	-	Public Arbitrator, Presiding Chairperson
Jo-Marie Lisa	-	Public Arbitrator
John Austin Darden, III	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

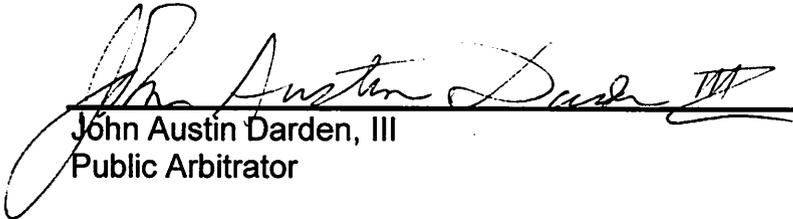
**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Steven M. Guttell  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Jo-Marie Lisa  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
John Austin Darden, III  
Public Arbitrator

*June 3, 2016*  
\_\_\_\_\_  
Signature Date

June 3, 2016  
Date of Service (For FINRA Dispute Resolution office use only)