

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

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In the Matter of the Arbitration Between:

Claimants

Alan Withrow and Belva Withrow

Case Number: 20-01248

vs.

Respondents

Money Concepts Capital Corp.,  
Christopher J. Passero,  
R. Andrew Skidmore,  
Passero Financial Group,  
Christopher J. Passero & Associates, LLC,  
Jeffrey Clendenin,  
Business Professional Group, LLC, and  
Passero-Clendenin-Skidmore, LLC

Hearing Site: Charleston, West Virginia

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customers vs. Member, Associated Persons, and Non-Members

This case was decided by a majority-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Alan Withrow and Belva Withrow (“Claimants”): Travis A. Griffith, Esq., Griffith Law Center, PLLC, Charleston, West Virginia.\*

For Respondents Money Concepts Capital Corp. (“Money Concepts”), Christopher J. Passero (“Passero”), R. Andrew Skidmore (“Skidmore”), Passero Financial Group, and Christopher J. Passero & Associates, LLC, hereinafter, collectively, referred to as “Respondents”: Charlotte Ann Hoffman Norris, Esq. and Lee Murray Hall, Esq., Jenkins Fenstermaker, PLLC, Huntington, West Virginia.

Respondents Jeffrey Clendenin, Business Professional Group, LLC, and Passero-Clendenin-Skidmore, LLC did not enter appearances in this matter.

\*FINRA recorded the appearance of Claimants’ counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimants may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimants’ counsel appeared at the expungement hearing.

### **CASE INFORMATION**

Statement of Claim filed on or about: April 20, 2020.  
Claimants signed the Submission Agreement: May 14, 2020.

Statement of Answer filed by Respondents on or about: July 6, 2020.  
Respondents signed the Submission Agreements: July 2, 2020.

Jeffrey Clendenin, Business Professional Group, LLC, and Passero-Clendenin-Skidmore, LLC did not file a Statement of Answer or sign the Submission Agreement.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: negligence, gross negligence, breach of fiduciary duty, fraud, civil conspiracy, suitability, misrepresentation/non-disclosures, and omission of facts. The causes of action related to Claimants' allegation that Respondents invested their funds in speculative and unsuitable investments, which included shares in Behringer Harvard REIT I and an annuity with Securities Benefits Life Insurance.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested that the Panel award the following relief: a judgment in an amount to be determined; reasonable attorneys' fees and costs; liquidated damages in excess of the jurisdictional limits of this Panel, including general and specific damages, attorneys' fees, and costs; punitive damages ; and further and additional relief, as this Panel deems just and appropriate under the circumstances.

In the Statement of Answer, Respondents requested that the Panel dismiss the Statement of Claim.

Passero and Skidmore filed requests for expungement of all references to this matter from Central Registration Depository ("CRD") registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

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

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

Jeffrey Clendenin, Business Professional Group, LLC, and Passero-Clendenin-Skidmore, LLC are not members or associated persons of FINRA and did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to the claims against Jeffrey Clendenin, Business Professional Group, LLC, and Passero-Clendenin-Skidmore, LLC.

On May 19, 2021, Claimants and Respondents filed a Joint Motion to Dismiss Passero, Passero Financial Group and Christopher J. Passero & Associates (collectively, the "Passero

Respondents”) (“Joint Motion to Dismiss”) with prejudice. In an Order dated May 26, 2021, the Panel granted the Joint Motion to Dismiss. Therefore, the Panel made no determination with respect to the claims against the Passero Respondents.

On June 21, 2021, Claimants filed a Notice of Resolution of Claim and Request for Dismissal, requesting dismissal as to the remaining Respondents.

On July 6, 2021, Passero and Skidmore filed Motions for Expungement, to which no responses were filed.

The Panel conducted a recorded, telephonic hearing on August 26, 2021, so the parties could present oral argument and evidence on Passero and Skidmore’s requests for expungement.

Claimants’ counsel participated in the expungement hearing and did not oppose the requests for expungement.

The Panel reviewed Passero and Skidmore’s BrokerCheck® Reports. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

The Panel also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Passero and Skidmore did not contribute to the settlement amount.

In recommending expungement for Skidmore, the Panel relied upon the following documentary or other evidence: testimony from Skidmore and Passero; the settlement agreement; BrokerCheck® Reports for Skidmore and Passero; and Skidmore and Passero’s Motions for Expungement and supplemental material.

The Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2068801) from registration records maintained by the CRD for Respondent Robert Andrew Skidmore (CRD Number 5229972) with the understanding that, pursuant to Notice to Members 04-16, Respondent Robert Andrew Skidmore must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code of Arbitration Procedure (“Code”), the Panel has made the following Rule 2080 affirmative finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The Panel has made the above Rule 2080 finding based on the following reasons:

Skidmore testified that he was not a financial advisor for Claimants and that at no time did he provide financial advice. He did not have a license suitable to provide financial advice. Passero, in his testimony, corroborated Skidmore's statements. Skidmore did not have a Series 7 License until 2016. Skidmore testified that he operated primarily in administrative and clerical roles with Claimants. Although Claimants named Skidmore as a respondent and identified him as the Chief Operating Officer of Passero Financial Group, Claimants never explicitly made a case for Skidmore's culpability. The Statement of Answer, states that Skidmore was an independent contractor, providing administrative and operational support. Respondents denied that Skidmore held himself out as Chief Operating Officer. Further, Claimants had no objection to Skidmore seeking an expungement, and Skidmore was not a party to the settlement agreement.

2. Christopher J. Passero’s request for expungement of the above-captioned arbitration (Occurrence Number 2068785) from his registration records maintained by the CRD is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim Filing Fee = \$ 1,575.00

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

FINRA Dispute Resolution Services previously deferred Claimants’ filing fee of \$ 1,575.00. Upon conclusion of the matter, the Panel determined to waive the fee.

#### **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, Money Concepts is assessed the following:

Member Surcharge = \$ 1,900.00  
Member Process Fee = \$ 3,750.00

**Late Pre-Hearing Cancellation Fees**

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

October 1, 2020, cancellation requested by Claimants and Respondents Waived

**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), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,125.00/session	=\$	1,125.00
Pre-Hearing Conference: December 2, 2020 1 session		
One (1) hearing session on expungement request @ \$1,125.00/session	=\$	1,125.00
Hearing: August 26, 2021 1 session		
<b>Total Hearing Session Fees</b>	<b>=\$</b>	<b>2,250.00</b>

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$562.50 of the hearing session fees to Passero.

The Panel has assessed \$562.50 of the hearing session fees to Skidmore.

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

**ARBITRATION PANEL**

Kevin R. Zehe	-	Public Arbitrator, Presiding Chairperson
John C. Aten	-	Public Arbitrator
Stephen M. Bales	-	Non-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**

***Kevin R. Zehe***

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Kevin R. Zehe  
Public Arbitrator, Presiding Chairperson

09/09/2021

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

***John C. Aten***

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John C. Aten  
Public Arbitrator

09/09/2021

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

***Stephen M. Bales***

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Stephen M. Bales  
Non-Public Arbitrator

09/13/2021

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

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September 10, 2021

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Date of Service (For FINRA Dispute Resolution Services use only)