

**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Norbert E. Hegge Trust, Norbert E. Hegge, Trustee, Cynthia Keisling, and Cynthia Keisling IRA  
(Claimants) v. Tracy Barker, John McCabe, and McDonald Investments (Respondents)

Case Number: 03-05998

Hearing Site: Cincinnati, Ohio

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Nature of the Dispute: Customers v. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimants Norbert E. Hegge Trust, Norbert E. Hegge, Trustee ("Hegge Trust"), Cynthia Keisling ("Keisling"), and Cynthia Keisling IRA ("Keisling IRA") hereinafter collectively referred to as "Claimants": Philip D. Sever, Esq., Cohen & Malad, LLP, Indianapolis, IN. Previously represented by: Philip D. Sever, Esq., The Sever Law Firm, Brecksville, OH.

Respondent John Erin McCabe ("McCabe"): Crystal L. Ford, Esq., Moeves & Halloran, PLLC, previously Moeves & Associates, Ft. Wright, KY.

Respondents Tracy Barker ("Barker") and McDonald Investments ("McDonald"): Elizabeth A. Jerdonek, Esq., Ulmer & Berne, LLP, Cleveland, OH.

McCabe, Barker, and McDonald are hereinafter collectively referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: August 12, 2003.

Claimant Hegge Trust signed the Uniform Submission Agreement: July 18, 2003.

Claimant Keisling, individually and on behalf of the IRA signed the Uniform Submission Agreement: July 28, 2003.

Statement of Answer and Cross-Claim filed by Respondent McCabe on or about: November 18, 2003.

Respondent McCabe signed the Uniform Submission Agreement: November 3, 2003.

Joint Statement of Answer filed by Respondents Barker and McDonald on or about: December 12, 2003.

Respondent Barker signed the Uniform Submission Agreement: December 3, 2003.

Respondent McDonald signed the Uniform Submission Agreement: December 13, 2003.

### **CASE SUMMARY**

Claimants asserted the following causes of action: suitability; fraud and misrepresentation; negligence; breach of fiduciary duty; frontrunning; failure to supervise and respondeat superior. The causes of action relate to common stocks and options.

Unless specifically admitted in his Answer, Respondent McCabe denied the allegations of wrongdoing set forth in the Statement of Claim. In his Cross-Claim, McCabe asserted the following causes of action: failure to supervise and respondeat superior.

Unless specifically admitted in their Answer, Respondents Barker and McDonald denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$131,466.00 for Cynthia Keisling; compensatory damages in the amount of \$116,333.00 for the Hegge Trust; disgorgement of commissions, margin interest and other compensation; punitive damages; interest; costs; attorneys' fees and consulting fees; and other and further relief as the Arbitration Panel deems just and proper.

Respondent McCabe requested dismissal of all claims against him; and unspecified compensatory damages with respect to his Cross-Claim.

Respondents Barker and McDonald requested that judgment be rendered in their favor and against Claimants; attorneys' fees; costs; and forum fees.

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

On or about April 26, 2004, Respondent McCabe withdrew his Cross-Claim against Respondents Barker and McDonald without prejudice.

On or about November 18, 2004, Claimants dismissed all claims against Respondent Barker with prejudice.

On or about November 22, 2004, Claimants notified NASD Dispute Resolution that the parties settled this matter. Also, on November 22, 2004, counsel for Respondents Barker and McDonald requested the entry of a Stipulated Award.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The claims of Claimants are dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Tracy Barker's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Barker must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$300.00
Cross-Claim filing fee	= \$250.00

#### **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 persons at the time of the events giving rise to the dispute. In this matter, McDonald Investments, Inc. is a party.

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

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

Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$2,250.00
<u>April 15, 2004 and June 28, 2005</u>	
Total Forum Fees	= \$2,250.00

1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimants jointly and severally have been assessed \$562.50 of the forum fees.
2. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent McCabe has been assessed \$562.50 of the forum fees.
3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Barker has been assessed \$562.50 of the forum fees.
4. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent McDonald has been assessed \$562.50 of the forum fees.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,125.00
Total Fees	= \$1,425.00
Less payments	= \$1,465.00
Refund Due Claimants	= \$ 40.00

*Pursuant to Rule 10332(f) of the Code of Arbitration Procedure, NASD is retaining the total initial amount of the hearing session deposited by the Claimants because this office was notified by the parties that they settled this matter within 8 business days of the first scheduled hearing.*

2. Respondent McCabe is solely liable for:

Cross-Claim Filing Fee	= \$ 250.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 812.50
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 512.50

3. Respondent Barker is solely liable for:

Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

4. Respondent McDonald is solely liable for:


Member Fees	= \$5,200.00
Forum Fees	= \$ 562.50
Total Fees	= \$5,762.50
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 562.50

All balances are due and payable to NASD Dispute Resolution

Parties' Signatures

  
Cynthia Keisling  
Claimant

3-14-05  
Signature Date

  
Norbert B. Hogg Trust  
Norbert B. Hogg, Trustee  
Claimant

3-14-05  
Signature Date

  
John Ehn McCabe  
Respondent

                      
Signature Date

  
MacDonald Investments  
Respondent

                      
Signature Date

  
Tracy Barker  
Respondent

11/29/04  
Signature Date

**Parties' Signatures**

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Cynthia Keisling  
Claimant

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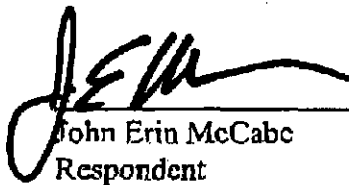
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Norbert E. Hegge Trust  
Norbert E. Hegge, Trustee  
Claimant

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Signature Date



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John Erin McCabe  
Respondent

12/5/04  
Signature Date

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McDonald Investments  
Respondent

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Signature Date

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Tracy Barker  
Respondent

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Signature Date

**Parties' Signatures**

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Cynthia Keisling  
Claimant

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Signature Date

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Norbert E. Hegge Trust  
Norbert E. Hegge, Trustee  
Claimant

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Signature Date


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John Erin McCabe  
Respondent

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Signature Date

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McDonald Investments  
Respondent

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12/17/04  
Signature Date

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Tracy Barker  
Respondent

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Signature Date

**Parties' Signatures**

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Cynthia Keisling  
Claimant

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Signature Date

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Norbert E. Hegge Trust  
Norbert E. Hegge, Trustee  
Claimant


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Signature Date

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John Erin McCabe  
Respondent

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Signature Date

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McDonald Investments  
Respondent

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Signature Date

  
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Tracy Barker  
Respondent

11/29/04  
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Signature Date

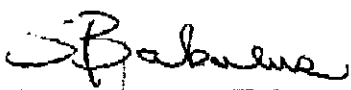


ARBITRATION PANEL

Sandra J. Bakslus	-	Non-Public Arbitrator, Presiding Chair
Lisa Shusterman	-	Public Arbitrator
Neal D. Baker, J.D.	-	Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.



Sandra J. Bakslus  
Non-Public Arbitrator, Presiding Chair

6/28/05  
Signature Date

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Lisa Shusterman  
Public Arbitrator

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

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Neal D. Baker, J.D.  
Public Arbitrator

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

July 19 2005  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

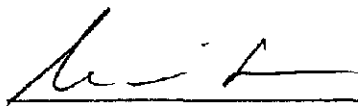
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Sandra J. Bakalus  
Non-Public Arbitrator, Presiding Chair

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Signature Date

  
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Lisa Shusterman  
Public Arbitrator

3.16.05  
\_\_\_\_\_  
Signature Date

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Neal D. Baker, J.D.  
Public Arbitrator

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

July 19, 2003  
\_\_\_\_\_  
Date of Service (For NASD office use only)

ARBITRATION PANEL

Sandra J. Bakalus	-	Non-Public Arbitrator, Presiding Chair
Lisa Shusterman	-	Public Arbitrator
Neal D. Baker, J.D.	-	Public Arbitrator

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Sandra J. Bakalus  
Non-Public Arbitrator, Presiding Chair

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Signature Date

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Lisa Shusterman  
Public Arbitrator

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

Neal D. Baker

Neal D. Baker, J.D.  
Public Arbitrator

7.8.05

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

July 19 2005  
Date of Service (For NASD office use only)