

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of Claimants/Counter-Respondents

Larry R. Bishop and James E. Maxwell

vs.

Case Number: 04-00256  
Hearing Site: Chicago, Illinois

Names of Respondents/Counter-Claimants

McDonald Investments, Inc. and  
Robert G. Jones

Consolidated with:

Name of Claimant

Jem P. Maxwell

vs.

Case Number: 04-04795  
Hearing Site: Chicago, Illinois

Name of Respondent

McDonald Investments, Inc.

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**NATURE OF THE DISPUTE**

Associated Persons vs. Member and Associated Person  
Associated Person vs. Member

**REPRESENTATION OF PARTIES**

Larry R. Bishop ("Bishop"), James E. Maxwell ("Maxwell") and Jem P. Maxwell ("Jem"), hereinafter collectively referred to as "Claimants," were represented by Nicholas P. Iavarone, Esq., The Iavarone Law Firm, Chicago, Illinois.

McDonald Investments, Inc. ("McDonald") and Robert G. Jones ("Jones"), hereinafter collectively referred to as "Respondents," were represented by Richard P. Goddard, Esq., Robert N. Rapp, Esq., and Scott Matasar, Esq., Calfee, Halter & Griswold, LLP, Cleveland, Ohio.

## **CASE INFORMATION**

### **04-00256**

The Statement of Claim was filed on or about January 15, 2004. The Submission Agreement of Claimants, Bishop and Maxwell, was signed on or about December 22, 2003. Bishop and Maxwell filed a Reply and Affirmative Defenses to Respondent McDonald's Counterclaim on or about September 10, 2004. Bishop and Maxwell filed a Response to McDonald's Motion to Amend Counterclaim on or about September 8, 2006.

The Statement of Answer and Counterclaim of McDonald was filed by Respondents, McDonald and Jones, on or about July 8, 2004. The Submission Agreement of McDonald was signed on or about July 6, 2004 by Shelly A. Goering. On or about August 15, 2006, McDonald filed a Motion to Amend Demand to Include Accrued Statutory Interest in the Counterclaim.

On or about February 15, 2006, Respondents filed an Agreed Request to Consolidate Cases 04-00256 and 04-04975. On or about February 21, 2006, Claimants filed a confirmation of the Agreed Request to Consolidate.

### **04-04795**

The Statement of Claim was filed on or about July 7, 2004. The Submission Agreement of Claimant, Jem P. Maxwell, was signed but undated.

The Statement of Answer was filed by McDonald on or about August 26, 2004. The Submission Agreement of McDonald was signed on or about August 25, 2004 by Shelly A. Goering.

## **CASE SUMMARY**

Claimants asserted the following causes of action: defamation; wrongful termination; and misrepresentation. The causes of action related to Claimants' allegation that they were abruptly terminated from the Chicago office of McDonald Investments, Inc. Bishop and Maxwell alleged that they were enticed to leave a former employer to join McDonald Investments, Inc. and Respondents failed to uphold their promises to provide resources and referrals to Bishop and Maxwell. Jem P. Maxwell alleged that his termination was in retaliation for violations Respondents believed James E. Maxwell committed. Jem further alleged that other employees were terminated at the same time as he was, but that their U-5 forms state they were terminated "due to office closure" and that he received no severance benefits similar to those other terminated employees. Claimants alleged that McDonald delayed the filing of their U-5 forms and that McDonald submitted false and misleading statements on their U-5 forms.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statements of Claim and asserted affirmative defenses including the following: Claimants' claims are barred, in whole or in part, because they were employed at will and subject to discharge at any time for any lawful reason or no reason; Claimants' claims are barred, in whole or in part, because they failed to follow McDonald's policies and industry standards in their respective positions; Claimants are barred from relief by the doctrines of equal fault or unclean hands; disclosures made by McDonald in the course of meeting securities industry regulatory reporting requirements are qualified and privileged; Bishop and Maxwell did not reasonably rely upon any alleged oral statements, communications, or promises made to them in connection with accepting employment at McDonald; and McDonald at all times and in all respects acted in good faith in the termination of the employment of Claimants, without malice or any malicious intent.

McDonald asserted a Counterclaim that pursuant the terms and conditions of the Bishop Loan Agreement and the Bishop Cognovit Promissory Notes, there is due and owing from Bishop the principal sum of \$479,472.00. McDonald asserted that pursuant the terms and conditions of the Maxwell Loan Agreement and the Maxwell Cognovit Promissory Notes, there is due and owing from Maxwell the principal sum of \$313,500.00. McDonald also asserted that Bishop and Maxwell, jointly and severally, owe it commission chargebacks in the amount of \$12,127.45.

Bishop and Maxwell denied the allegations made in the Counterclaim and asserted affirmative defenses including the following: McDonald's Counterclaim is barred by the doctrine of unclean hands; and Respondents are barred from enforcing the terms of the Loan Agreements or Notes because they have breached their duty of good faith and fair dealing.

### **RELIEF REQUESTED**

#### **04-00256**

Claimants, Bishop and Maxwell, requested an award in the amount of:

Actual/Compensatory Damages	\$ 10,000,000.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary	Unspecified
Expungement	

Respondents, McDonald and Jones, requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

In the Counterclaim, McDonald Investments, Inc. requested an award in the amount of:

Actual/Compensatory Damages	\$805,099.45
Interest	Unspecified

**04-04795**

Claimant, Jem Maxwell, requested an award in the amount of:

Actual/Compensatory Damages	\$ 10,000,000.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary	Unspecified
Expungement	

Respondent, McDonald, requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

**OTHER ISSUES CONSIDERED & DECIDED**

Respondent, Robert G. Jones, did not file with the NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On or about March 3, 2006, the Panel granted the parties Agreed Request to Consolidate Cases 04-00256 and 04-04795. Pursuant to the parties' agreement, Case 04-04795 served as the master case.

On or about September 18, 2006, the Panel entered an Order granting McDonald's Motion to Amend its Counterclaim to Include Accrued Statutory Interest pursuant to Ohio Rev. Code §§ 343.03(A) and 5703.47(B).

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.

### **AWARD**

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

- 1.) Respondents, McDonald Investments, Inc. and Robert G. Jones, are jointly and severally liable for and shall pay to Claimant, Larry R. Bishop, the sum of \$246,000.00 in compensatory damages;
- 2.) Respondents, McDonald Investments, Inc. and Robert G. Jones, are jointly and severally liable for and shall pay to Claimant, James E. Maxwell, the sum of \$233,700.00 in compensatory damages;
- 3.) Respondent, McDonald Investments, Inc., is liable for and shall pay to Claimant, Jem P. Maxwell, the sum of \$148,000.00 in compensatory damages;
- 4.) Respondents, McDonald Investments, Inc. and Robert G. Jones, are jointly and severally liable for and shall pay to Claimant, Larry R. Bishop, the sum of \$611,678.58 in punitive damages pursuant to *Mastrobuono vs. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995);
- 5.) Respondents, McDonald Investments, Inc. and Robert G. Jones, are jointly and severally liable for and shall pay to Claimant, James E. Maxwell, the sum of \$420,019.37 in punitive damages pursuant to *Mastrobuono vs. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995);
- 6.) Respondent, McDonald Investments, Inc., is liable for and shall pay to Claimant, Jem P. Maxwell, the sum of \$276,000.00 in punitive damages pursuant to *Mastrobuono vs. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995);
- 7.) Claimant, Larry R. Bishop, is liable for and shall pay to Respondent, McDonald Investments, Inc., the sum of \$553,678.58 in compensatory damages and interest;
- 8.) Claimant, James E. Maxwell, is liable for and shall pay to Respondent, McDonald Investments, Inc., the sum of \$362,019.37 in compensatory damages and interest;
- 9.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;

- 10.) The Panel recommends the expungement of the following language from the full termination section of the U-5 forms of Claimants, Larry R. Bishop, James E. Maxwell, and Jem P. Maxwell, maintained by the NASD Central Registration Depository ("CRD") based on the defamatory nature of the information:

"Failure to follow firm policy and industry standards of conduct"

The panel further recommends that the U-5s be amended to substitute the following in place of the above language:

In Section 3. Full Termination, Reason for Termination:

☒ \*Other

\*Provide an explanation below:

"Office closed;" and

- 11.) Any relief not specifically enumerated, including attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim filing fee (04-00256)	= \$	600.00
Initial Claim filing fee (04-04795)	= \$	600.00
Counterclaim filing fee	= \$	1,250.00

#### **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 person at the time of the events giving rise to the dispute. In this matter, the member firm is McDonald Investments, Inc.

#### **04-00256**

Member surcharge	= \$	3,350.00
Pre-hearing process fee	= \$	750.00
Hearing process fee	= \$	5,500.00

**04-04795**

Member surcharge	= \$	3,350.00
Pre-hearing process fee	= \$	750.00
Hearing process fee	= \$	5,500.00

**Adjournment Fees**

**04-04795**

Adjournments granted during these proceedings:

January 3 – 6, 2005, adjournment requested by Jem P. Maxwell (Waived by Panel)	= \$	1,200.00
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**Forum Fees and Assessments**

**04-00256**

The Panel has assessed forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. A 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. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$	2,400.00
Pre-hearing conferences: October 26, 2004	1 session	
January 18, 2005	1 session	
Two (2) Hearing sessions x \$1,200.00	= \$	2,400.00
Hearing Dates: July 12, 2005	1 session	
July 13, 2005	1 session	
Total Forum Fees	= \$	4,800.00

The Panel has assessed \$2,400.00 of the forum fees, jointly and severally, to Larry R. Bishop and James E. Maxwell.

The Panel has assessed \$2,400.00 of the forum fees jointly and severally to McDonald Investments, Inc. and Robert G. Jones.

**04-04795**

The Panel has assessed forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. A 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. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$	2,400.00
Pre-hearing conferences: December 3, 2004	1 session	

	September 26, 2005	1 session	
Twenty-Four (24) Hearing sessions x \$1,200.00			= \$ 28,800.00
Hearing Dates:	January 9, 2007	2 sessions	
	January 10, 2007	2 sessions	
	January 11, 2007	2 sessions	
	January 12, 2007	2 sessions	
	January 16, 2007	2 sessions	
	January 17, 2007	2 sessions	
	January 18, 2007	2 sessions	
	January 19, 2007	2 sessions	
	January 22, 2007	2 sessions	
	January 23, 2007	2 sessions	
	January 24, 2007	2 sessions	
	January 25, 2007	2 sessions	
Total Forum Fees			= \$ 31,200.00

The Panel has assessed \$15,600.00 of the forum fees jointly and severally to Larry R. Bishop, James E. Maxwell, and Jem P. Maxwell.

The Panel has assessed \$15,600.00 of the forum fees jointly and severally to McDonald Investments, Inc. and Robert G. Jones.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters and security.

Larry R. Bishop, James E. Maxwell, and Jem P. Maxwell requested  
audio transcripts = \$ 45.00

### **FEE SUMMARY**

#### **04-00256**

Claimants, Larry R. Bishop and James E. Maxwell, are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 2,400.00
Total Fees	= \$ 3,000.00
Less payments	= \$ 2,800.00
Balance Due NASD Dispute Resolution	= \$ 200.00

Respondent, McDonald Investments, Inc., is liable for:



Counterclaim Filing Fee	= \$	1,250.00
Member Fees	= \$	9,600.00
Total Fees	= \$	10,850.00
Less payments	= \$	13,400.00
Balance to be applied to Case 04-04795	= \$	2,550.00

Respondents, McDonald Investments, Inc. and Robert G. Jones, are jointly and severally liable for:

Forum Fees	= \$	2,400.00
Total Fees	= \$	2,400.00
Less payments	= \$	2,400.00
Balance Due NASD Dispute Resolution	= \$	0.00

**04-04795**

Claimant, Jem P. Maxwell, is liable for:

Initial Filing Fees	= \$	600.00
Total Fees	= \$	600.00
Less payments	= \$	600.00
Balance Due NASD Dispute Resolution	= \$	0.00

Claimants, Larry R. Bishop, James E. Maxwell, and Jem P. Maxwell, are jointly and severally liable for:

Administrative Costs	= \$	45.00
Forum Fees	= \$	15,600.00
Total Fees	= \$	15,645.00
Less payments	= \$	1,200.00
Balance Due NASD Dispute Resolution	= \$	14,445.00

Respondent, McDonald Investments, Inc., is liable for:

Member Fees	= \$	9,600.00
Total Fees	= \$	9,600.00
Less payments	= \$	9,600.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, McDonald Investments, Inc. and Robert G. Jones, are jointly and severally liable for:

Forum Fees	= \$	15,600.00
Total Fees	= \$	15,600.00
Less amount applied from Case 04-00256	= \$	2,550.00
Less payments	= \$	5,500.00
Balance Due NASD Dispute Resolution	= \$	7,550.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Stephen C. Esposito, Esq. – Public Arbitrator, Presiding Chair  
Yvette S. Sanders, Esq. - Public Arbitrator  
Thomas E. Haviland, Jr. - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Stephen C. Esposito, Esq.  
Stephen C. Esposito, Esq.  
Public Arbitrator, Presiding Chair

February 13, 2007  
Signature Date

/s/ Yvette S. Sanders, Esq.  
Yvette S. Sanders, Esq.  
Public Arbitrator

February 13, 2007  
Signature Date

/s/ Thomas E. Haviland, Jr.  
Thomas E. Haviland, Jr.  
Non-Public Arbitrator

February 13, 2007  
Signature Date

February 14, 2007  
Date of Service (For NASD office use only)

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Signature Date

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Public Arbitrator

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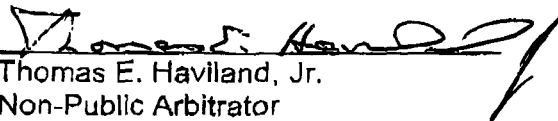
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