

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

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In the Matter of the Arbitration Between:

Name of Claimant

Kevin Patrick Gerard

and

Case Number: 04-04330

Hearing Site: Milwaukee, Wisconsin

Name of Respondents

Carl M. Hennig, Inc., Thomas Alan Harenburg,  
Mark Allen Stoffel, Jack W. Schloesser,  
Tom Nigil, and William R. Holtz

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**NATURE OF DISPUTE**

Customer v. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant, Kevin Patrick Gerard, ("Gerard"), or, ("Claimant"), from Menomone Falls, Wisconsin was pro se.

Respondents, Carl M. Hennig, Inc., ("Hennig"), Thomas Alan Harenburg, ("Harenburg") Mark Allen Stoffel, ("Stoffel") Jack W. Schloesser, ("Schloesser"), Tom Nigil, ("Nigil") and William R. Holtz ("Holtz") were represented by Thomas A. Harenburg of Oshkosh, Wisconsin.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 18, 2004. Claimant signed a Uniform Submission Agreement on June 22, 2004.

On or about September 27, 2004 Claimant filed an Amendment to his Statement of Claim in which he added Holtz as a Respondent.

All of the Respondents filed a Joint Statement of Answer on August 11, 2004 with the exception of Holtz who filed an Answer on September 30, 2004. Carl M. Hennig signed the Uniform Submission Agreement on July 1, 2004. Thomas Alan Harenburg signed the Uniform Submission Agreement on August 10, 2004. Jack W. Schloesser signed the Uniform Submission Agreement on August 6, 2004. Thomas Nigil signed the Uniform Submission Agreement on August 6, 2004. Mark Allen Stoffel signed the Uniform Submission Agreement on August 5, 2004. William R. Holtz did not sign a Uniform Submission Agreement.

On or about November 16, 2004 Respondent Schloesser filed a Counterclaim against Gerard.

On or about December 30, 2004 Gerard filed an Answer to the Counterclaim.

On or about December 30, 2004 Respondents filed a Motion to Dismiss Gerard's Statement of Claim in its entirety.

On or about January 6, 2005 Claimant filed a Response to Respondents' Motion to Dismiss.

On or about February 3, 2005 Respondent Schloesser filed a Motion to Bar Claimant's Response to his Counterclaim.

### **CASE SUMMARY**

Claimant asserted the following causes of action: unjust enrichment; coercion; professional defamation; and tortious interference with business relations. All of Claimant's causes of action are in connection with his "alleged" breach of an employee contract with Respondent Hennig.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant was terminated for cause; Respondent, Hennig, did not owe Claimant any commissions for his period of employment with Hennig; Claimant worked as a third-party administrator as well as the broker of record; Claimant breached his contract with Hennig by failing to give his successor, Tom Nigel, pertinent information regarding his former accounts with Hennig; and, Respondents did not make any defamatory or untrue statement regarding Gerard.

In his Counterclaim against Gerard, Schloesser alleged as follows: Gerard refused to turn over copies of necessary documents for OEC GRAPHICS INC. As a result, Schloesser could not file forms 5500, which were past due; and Schloesser alleged that he has incurred damages for the cost of a 2003 audit.

In his Answer to the Counterclaim Gerard stated that the Counterclaim was improperly filed and should be dismissed in its entirety with prejudice. Gerard also requested that the panel impose a fine against Respondent for improperly filing the Counterclaim and for his refusal to respond to Gerard's telephone inquiries regarding the same.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$54,500.00.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Respondent Schloesser also requested compensatory damages in his Counterclaim in the amount of \$15,460.00.

### **OTHER ISSUES CONSIDERED & DECIDED**

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

Respondent Holtz did not file a Uniform Submission Agreement with NASD Dispute Resolution but having filed an Answer and having appeared and testified at the hearing he is bound by all determinations of the arbitration panel.

### **AWARD**

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

1. Claimant Kevin Patrick Gerard's Claims against Respondents Carl M. Hennig, Inc., Thomas Alan Harenburg, Mark Allen Stoffel, Jack W. Schloesser, Tom Nigil, and William R. Holtz are dismissed in their entirety with prejudice;
2. Respondent Schloesser's Counterclaim against Claimant Kevin Patrick Gerard is dismissed in its entirety with prejudice;
3. That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and,
4. That any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **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 = \$ 225.00

Counterclaim filing fee = \$ 125.00

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are Carl M. Henning, Inc., and Gerard Asset Management. Each is responsible for the following fees.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

### **Forum Fees and Assessments**

The Arbitration 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. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Arbitration Panel x \$ 750.00	= \$1,500.00
November 15, 2004	1 session
January 20, 2005	1 session

Two (2) Hearing sessions x \$ 750.00.	= \$ 1,500.00
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February 23, 2005	2 sessions
Total Fees	= \$ 3,000.00

The Panel has assessed \$1,500.00 of the forum fees to Claimant Kevin Patrick Gerard.

The Panel has assessed \$1,500.00 of the forum fees to Respondents Carl M. Henning, Inc., Thomas Alan Harenburg, Mark Allen Stoffel, Jack W. Schloesser, Tom Nigil, and William R. Holtz jointly and severally.

### **Fee Summary**

Claimant Kevin Patrick Gerard is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,500.00
Total Amount	= \$ 1725.00
Less Payments	= \$ 975.00
Balance due to Dispute Resolution	= \$ 750.00

Respondent Carl M. Hennig is solely liable for Inc.:

Member Fees	= \$ 3,550.00
Total Fees	= \$ 3,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ .00

Respondent Schloesser is solely liable for :

Counter-claim Filing fees	=\$ 125.00
Less Payments	=\$ 0.00
Balance due to NASD Dispute Resolution	=\$ 125.00

Respondents Carl M. Hennig, Inc., Thomas Alan Harenburg, Mark Allen Stoffel, Jack W. Schloesser, Tom Nigil, and William R. Holtz are jointly and severally liable for:

Forum Fees	= \$ 1,500.00
Total Fees	= \$ 1,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,500.00

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

**ARBITRATION PANEL**

Larry Carlson, Esq.- Public Arbitrator, Presiding Chair  
Gordon B. Shneider, Esq.-Public-Public Arbitrator  
John Demetropoulos - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Larry Carlson, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Gordon B. Shneider, Esq.  
Public Arbitrator

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Signature Dates

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John Demetropoulos  
Non-Public Arbitrator

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

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Date of Service (For NASD office use only)

NASD Dispute Resolution  
 Arbitration No. 04-04330  
 Award Page 5 of 5

Respondent Carl M. Hennig is solely liable for Inc.:

Member Fees	= \$ 3,550.00
Total Fees	= \$ 3,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ .00

Respondent Schloenger is solely liable for :

Counter-claim Filing fees	= \$ 125.00
Less Payments	= \$ 0.00
Balance due to NASD Dispute Resolution	= \$ 125.00

Respondents Carl M. Hennig, Inc., Thomas Alan Harenburg, Mark Allen Stoffel, Jack W. Schloesser, Tom Nigil, and William R. Holtz are jointly and severally liable for:

Forum Fees	= \$ 1,500.00
Total Fees	= \$ 1,500.00
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 Gordon B. Shneider, Esq.-Public-Public Arbitrator  
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Concurring Arbitrators:

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 Larry Carlson, Esq.  
 Public Arbitrator, Presiding Chair

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 Signature Date

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 Gordon B. Shneider, Esq.  
 Public Arbitrator

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 Signature Dates

\_\_\_\_\_  
 John Demetropoulos  
 Non-Public Arbitrator

4-26-2005  
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 Signature Date

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

NASD Dispute Resolution  
Arbitration No. 04-04890  
Award Page 5 of 5

Respondent Carl M. Hennig is solely liable for Inc.:

Member Fees	= \$ 3,550.00
Total Fees	= \$ 3,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ .00

Respondent Schloenger is solely liable for :

Counter-claim Filing fees	=\$ 125.00
Less Payments	=\$ 0.00
Balance due to NASD Dispute Resolution	=\$ 125.00

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Concurring Arbitrators:

  
Larry Carlson, Esq.  
Public Arbitrator, Presiding Chair

25 April 05  
Signature Date

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Gordon B. Shneider, Esq.  
Public Arbitrator

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Signature Dates

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John Demetropoulos  
Non-Public Arbitrator

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Signature Date

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Respondent Carl M. Hennig is solely liable for Inc.:

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Total Fees	= \$ 3,550.00
Less payments	= \$ 3,550.00
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Gordon B. Shneider, Esq.  
Public Arbitrator

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