

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

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In the Matter of the Arbitration Between:

Kenneth Spencer, Derek Lautato, Joseph Prudente and Nicholas Marzella (Claimants)  
vs. Heartland Securities, Corp. (Respondent)

Case Number: 05-04037

Hearing Site: New York, New York

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Nature of the Dispute: Associated Persons vs. Member.

**REPRESENTATION OF PARTIES**

Claimants Kenneth Spencer ("Spencer"), Derek Lautato ("Lautato"), Joseph Prudente ("Prudente") and Nicholas Marzella ("Marzella"), hereinafter collectively referred to as "Claimants": Michael Kalmus, Esq., Attorney at Law, New York, NY.

Respondent Heartland Securities, Corp. did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: July 14, 2005.

Claimant Spencer signed the Uniform Submission Agreement: July 14, 2005.

Claimant Lautato signed the Uniform Submission Agreement: July 17, 2005.

Claimant Prudente signed the Uniform Submission Agreement: July 15, 2005.

Claimant Marzella signed the Uniform Submission Agreement: July 20, 2005.

Respondent did not file an Answer nor submit a Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following cause of action: Respondent knowingly made false and defamatory statements on their Form U-5s.

**RELIEF REQUESTED**

Claimants requested a finding that Heartland's Form U-5 reporting for each Claimant was false and defamatory; reformation of each Claimant's Form U-5 to reflect the true nature of their termination as voluntary and expungement of the defamatory comments from each of Claimants' Form U-5's and for such other relief as the Arbitration Panel deems just and proper.

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

Respondent Heartland Securities Corp. filed for bankruptcy protection under the United States Bankruptcy Law on March 26, 2003. As a result, Claimants' claims against Heartland Securities Corp. were stayed.

By order of the United States Bankruptcy Court of the Southern District of New York, the automatic stay imposed pursuant to section 362(a) of the Bankruptcy Code was modified to allow the Claimants pursue their claims for expungement before the arbitration panel.

The Claimants 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 evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel finds that Heartland's Form U-5 reporting for each Claimant was false and defamatory. The Panel recommends the expungement of the Form U5 for Kenneth Spencer. The Panel recommends the expungement of the Reason for Termination from "Discharge," and replaces it with "Voluntary." The Panel recommends the expungement of the termination comment in its entirety with no replacement language. Furthermore, the Panel orders the expungement of all references to the above matter reported on the Form U4 and Form U5 maintained by the Central Registration Depository ("CRD") based upon the defamatory nature of the information.
2. The Panel finds that Heartland's Form U-5 reporting for each Claimant was false and defamatory. The Panel recommends the expungement of the Form U5 for Derek Lautato. The Panel recommends the expungement of the Reason for Termination from "Discharge," and replaces it with "Voluntary." The Panel recommends the expungement of the termination comment in its entirety with no replacement language. Furthermore, the Panel orders the expungement of all references to the above matter reported on the Form U4 and Form U5 maintained by the Central Registration Depository ("CRD") based upon the defamatory nature of the information.
3. The Panel finds that Heartland's Form U-5 reporting for each Claimant was false and defamatory. The Panel recommends the expungement of the Form U5 for Joseph Prudente. The Panel recommends the expungement of the Reason for Termination from "Discharge," and replaces it with "Voluntary." The Panel recommends the expungement of the termination comment in its entirety with no replacement language. Furthermore, the Panel orders the expungement of all references to the above matter reported on the Form U4 and Form U5 maintained by the Central Registration Depository ("CRD") based upon the defamatory nature of the information.

4. The Panel finds that Heartland's Form U-5 reporting for each Claimant was false and defamatory. The Panel recommends the expungement of the Form U5 for Nicholas Marzella. The Panel recommends the expungement of the Reason for Termination from "Discharge," and replaces it with "Voluntary." The Panel recommends the expungement of the termination comment in its entirety with no replacement language. Furthermore, the Panel orders the expungement of all references to the above matter reported on the Form U4 and Form U5 maintained by the Central Registration Depository ("CRD") based upon the defamatory nature of the information.
5. Any and all relief not specifically addressed herein 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	= \$ 250.00
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#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each 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:

One (1) Pre-hearing session with Panel @ \$1,000.00 /session	= \$1,000.00
Pre-hearing conference: March 20, 2006	1 session

One (1) Hearing session @ \$1,000.00/session	= \$1,000.00
Hearing Date: June 27, 2006	1 session

Total Forum Fees	= \$2,000.00
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1. The Panel has assessed \$2,000.00 of the forum fees to Heartland Securities Corp. The fees were waived because Heartland Securities Corp. filed for bankruptcy protection.

### **Fee Summary**

1. Claimants Spencer, Lautato, Prudente and Marzella are jointly and severally liable for:

Initial Filing Fee	= \$ 250.00
Total Fees	= \$ 250.00
Less payments	= \$1,250.00
Refund Due Claimants	= \$1,000.00

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

**ARBITRATION PANEL**

Arnold Wagner	-	Public Arbitrator, Presiding Chairperson
Jerome Lowengrub, CPA	-	Public Arbitrator
Joseph D. Cosgrove, Esq.	-	Non-Public Arbitrator

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, which is my award.

**Concurring Arbitrators' Signatures**



Arnold Wagner  
Public Arbitrator, Presiding Chairperson

7/25/2006  
Signature Date

Jerome Lowengrub, CPA  
Public Arbitrator

Signature Date

Joseph D. Cosgrove, Esq.  
Non-Public Arbitrator

Signature Date

July 26, 2006

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Arnold Wagner	-	Public Arbitrator, Presiding Chairperson
Jerome Lowengrub, CPA	-	Public Arbitrator
Joseph D. Cosgrove, Esq.	-	Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Jerome Lowengrub, CPA  
Public Arbitrator

7/25/06  
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Signature Date

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Joseph D. Cosgrove, Esq.  
Non-Public Arbitrator

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July 26, 2006

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