

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimants

Michael A. Boyd, Jr.  
Michael A. Boyd, Inc.  
Robert Joel Blumenthal  
Joyce Blumenthal  
Terence M. York  
Arthur S. Raskin  
Martha Raskin  
Alan D. Bunims  
Roderick Boyd  
et al

93-02144

Name of Respondents

David Bruce McMahan  
McMahan Securities Co. L.P.  
William Fertig  
Mark Allen Plimpton  
Saul Schwartzman  
Scott L. Dillinger  
Dominick De Pinto  
McMahan & Company

---

**REPRESENTATION**

For Claimants Michael A. Boyd, Jr., Michael A. Boyd, Inc., Robert Joel Blumenthal, Joyce Blumenthal, Terence M. York, Arthur S. Raskin, Martha Raskin, Alan D. Bunims, Roderick Boyd, Michael F. McNulty, Walter K. McNulty and Judith Emily Doris appeared Benjamin Green, Esq. and Joseph Pastore, Esq. of the law firm of Kelley, Drye & Warren, located in Stamford, Connecticut.

For Respondents David Bruce McMahan, McMahan Securities Co. L.P., William Fertig, Mark Allen Plimpton, Saul Schwartzman, Scott L. Dillinger, Dominick DePinto and McMahan & Company appeared Fred H. Perkins, Esq. and Deborah Lans of the law firm of Morrison, Cohen, Singer & Weinstein, located in New York City, New York.

**CASE SUMMARY**

The Statement of Claim was filed on May 26, 1993.

Claimants Michael A. Boyd, Inc., Michael a. Boyd, Jr., Terence M. York, Arthur S. Raskin, Martha Raskin, Alan Bunims, Roderick Boyd, Robert Blumenthal, Joyce blumenthal, Michael F. McNulty, Walter McNulty and Judith E. Doris executed Uniform Submission Agreements on May 25, 1993.

A Joint Statement of Answer was filed by Respondents' on August 11, 1993.

Respondents McMahan Securities Co. L.P., D. Bruce McMahan and McMahan and Company executed Submission Agreements on October 7, 1993.

Respondents William Fertig, Mark Plimpton, Saul Schwartzman, Scott Dillinger and Dominick DePinto executed Submission Agreements on August 24, 1993.

Claimants' Amended Statement of Claim was filed on October 24, 1994.

Respondents' Answer to Amended Statement of Claim, with Statement of Counterclaims was filed on November 14, 1994.

Claimants' Statement of Answer to Respondents' Counterclaims was filed on November 30, 1994.

#### **HEARING INFORMATION**

Pre-Hearing Conferences:	January	10, 1994	-	One Session
	January	12, 1994	-	One Session
	March	1, 1994	-	One Session
	November	21, 1994	-	One Session
Hearing Dates/Sessions:	June	8, 1994	-	One Session
	October	18, 1994	-	Two Sessions
	December	6, 1994	-	Two Sessions
	December	7, 1994	-	Two Sessions
	December	8, 1994	-	Two Sessions
	January	9, 1995	-	Two Sessions
	January	13, 1995	-	Two Sessions
	February	22, 1995	-	Two Sessions
	February	23, 1995	-	Two Sessions
	February	27, 1995	-	Two Sessions
	March	2, 1995	-	Two Sessions
	March	3, 1995	-	Two Sessions
	April	6, 1995	-	Two Sessions
	April	10, 1995	-	Two Sessions
	April	11, 1995	-	Two Sessions
	April	27, 1995	-	Two Sessions
	April	28, 1995	-	Two Sessions
	May	2, 1995	-	Two Sessions
	May	3, 1995	-	Two Sessions
	May	4, 1995	-	Two Sessions
	May	10, 1995	-	Two Sessions
	May	11, 1995	-	Two Sessions
	May	12, 1995	-	Two Sessions
	June	8, 1995	-	Two Sessions
	June	9, 1995	-	One Session
	June	15, 1995	-	One Session
	July	13, 1995	-	Two Sessions

September	14, 1995	-	Two Sessions
September	15, 1995	-	Two Sessions
September	28, 1995	-	Two Sessions
October	12, 1995	-	Two Sessions
October	13, 1995	-	Two Sessions
November	2, 1995	-	Two Sessions
November	3, 1995	-	Two Sessions
November	6, 1995	-	Two Sessions
November	7, 1995	-	Two Sessions
November	13, 1995	-	Two Sessions
November	15, 1995	-	Two Sessions
November	20, 1995	-	Two Sessions
December	5, 1995	-	Two Sessions
December	6, 1995	-	Two Sessions
December	7, 1995	-	Two Sessions
December	12, 1995	-	Two Sessions
December	13, 1995	-	Two Sessions
December	14, 1995	-	Two Sessions
December	19, 1995	-	Two Sessions
December	20, 1995	-	Two Sessions
December	21, 1995	-	Two Sessions
February	6, 1996	-	Two Sessions
February	7, 1996	-	Two Sessions
February	8, 1996	-	Two Sessions
February	20, 1996	-	Two Sessions
February	21, 1996	-	Two Sessions
February	26, 1996	-	Two Sessions
February	27, 1996	-	Two Sessions
March	18, 1996	-	Two Sessions
March	19, 1996	-	Two Sessions
March	20, 1996	-	Two Sessions
March	25, 1996	-	Two Sessions
March	26, 1996	-	Two Sessions
March	27, 1996	-	Two Sessions
April	22, 1996	-	Two Sessions
April	23, 1996	-	Two Sessions
April	24, 1996	-	Two Sessions
April	30, 1996	-	Two Sessions
May	7, 1996	-	Two Sessions
May	8, 1996	-	Two Sessions
May	13, 1996	-	Two Sessions
May	14, 1996	-	Two Sessions
May	22, 1996	-	Two Sessions
May	23, 1996	-	Two Sessions
May	28, 1996	-	Two Sessions
May	29, 1996	-	Two Sessions
May	30, 1996	-	Two Sessions
June	3, 1996	-	Two Sessions
June	4, 1996	-	Two Sessions

June	5, 1996	-	Two Sessions
July	10, 1996	-	Two Sessions
July	11, 1996	-	Two Sessions
July	16, 1996	-	Two Sessions
July	17, 1996	-	Two Sessions
July	18, 1996	-	Two Sessions
July	25, 1996	-	Two Sessions
July	26, 1996	-	Two Sessions
July	29, 1996	-	Two Sessions
July	30, 1996	-	One Session
September	24, 1996	-	Two Sessions
September	25, 1996	-	One Session
September	30, 1996	-	Two Sessions
October	1, 1996	-	Two Sessions

Hearing Location: The hearing was held at the offices of the National Association of Securities Dealers, Inc. located in New York City, New York.

### **CASE SUMMARY**

#### **AFFIRMATIVE CLAIMS**

**Return of Capital and Fraud:** Prior to October 1990, claimants Michael A. Boyd ("Mr. Boyd") and Michael A. Boyd, Inc. ("MAB, Inc.") developed and managed a profitable convertible securities operation for respondent McMahan Securities Co. L.P. ("McMahan Securities") and its predecessor partnerships. After Mr. Boyd became a general partner in 1990, he had a series of disagreements with fellow general partner respondent D. Bruce McMahan ("McMahan") regarding the governance of the firm. As a result of an accommodation reached by Mr. Boyd and McMahan, McMahan represented to claimants that he was willing to join Mr. Boyd and the other claimants in a new firm and allow more formal committee governance structure. In reliance on McMahan's representations, claimants, while working for and contributing to the profits of McMahan Securities, spent six months creating the new entity, McMahan Capital Markets L.P. ("McMahan Capital Markets"). Shortly before the anticipated regulatory approval of the new firm, McMahan persuaded claimants to contribute substantial amounts of capital to McMahan Securities by representing that he needed capital to acquire Greentree Mortgage Company and that claimants' capital would be transferred to McMahan Capital Markets as soon as it was approved as a broker-dealer.

In late July 1992, on a business trip to China, McMahan, without warning, demanded the resignation of claimant Terence M. York ("Mr. York") from McMahan Securities. Mr. York was pivotal in establishing the new firm and was slated to be McMahan Capital Markets' chief operating officer. As a result, it became clear that McMahan never intended to establish the new firm. Shortly thereafter, those claimants with capital invested in McMahan Securities demanded the return of their capital and announced that they would withdraw as partners from the firm. For nearly four years respondents have withheld approximately \$610,000 of claimants' capital in violation of the terms of the McMahan Securities' Partnership Agreement. Respondents' tortious conduct has deprived these claimants of years of earnings on the withheld capital. In addition, funds invested in McMahan Capital Management have also been withheld after its dissolution.

**Unpaid Wages:** Claimants Alan D. Bunims ("Bunims"), Judith E. Doris ("Doris"), Michael P. McNulty ("M. McNulty") and Roderick Boyd ("R. Boyd") seek compensation earned while employed at McMahan Securities which has been wrongfully withheld.

**Vexatious Litigation, Tortious Interference, Unfair Competition and CUTPA:** In retaliation for claimants' attempt to obtain the return of these funds contributed as partners of respondent McMahan Securities, and in an effort to harass, annoy, impede and to prevent claimants from establishing and running a new firm, in July 1993, respondents commenced an action in the United States District Court for the District of Connecticut entitled McMahan Securities Co., et al. v. Forum Capital Markets L.P. et al., 3:93 CV01364 (TFGD) (the "Federal litigation"). Respondents refused to arbitrate the dispute as was required. Moreover, the Federal litigation was commenced without probable cause. For example, respondents were well aware that Mr. Boyd and MAB, Inc. were the authors of computer programs called ABTAR and CATS and any trade secrets contained therein. Respondents also knew that Mr. Boyd's ownership interest in ABTAR and CATS was not divested pursuant to the September 1, 1992 Termination Agreement between and among Mr. Boyd, McMahan and McMahan Securities (the "September Agreement") because McMahan admits that he did not comply with the September Agreement.<sup>1</sup> Moreover, respondents were well aware that the September Agreement expressly permitted Mr. Boyd to build upon his many years of development of ABTAR and CATS programs. Respondents' allegations regarding the renovation of the McMahan Securities building, which respondents did not dare assert in the Federal litigation, further highlight their frivolous claims here. Although Mr. Boyd's May 9, 1991 estimate of expenses was clearly and indisputably a "first pass" at establishing the costs of renovation, respondents seek to blame Mr. Boyd for all cost overruns greater than his estimates even when most cost overruns were supervised or approved by respondents. Respondents' claims regarding theft of trade secrets are also without basis. Respondents' own testimony reveals that these purported trade secrets were delivered to Mr. York at his new offices.<sup>2</sup> Additionally, the claims in the Federal litigation and in this arbitration were brought with malicious intent. Twice respondents sought to disqualify claimants' attorneys based upon claims of conflict of interest which *three* courts found were baseless. Further, in the Federal litigation respondents joined claimant Forum Capital Markets, L.P.'s ("Forum") most important investor, Troute Trading Fund Ltd., and its affiliates, TTF and Yield Enhancement Partners ("Troute") as parties to the action, notwithstanding that Troute had *no* relationship with the respondents at any time, and the investor had no involvement in the establishment or operation of Forum. Their respondents' action caused Troute to withdraw \$5 million of its investment. As a result, the pendency of the Federal litigation and the baseless claims made in the arbitration have had a chilling, and no doubt intended effect on the ability of the claimants to grow their business, to attract investors and retain its salesforce.<sup>3</sup> Through their vexatious litigation and other means, respondents' actions also violate common law unfair competition laws, common law tort, unfair competition under the Federal Trademark Act of 1946 and 15 U.S.C. § 1125 and the Connecticut Unfair Trade Practice Act § 42-110a *et seq.*

---

<sup>1</sup> See McMahan testimony at pp. 6779-6780.

<sup>2</sup> See Soro testimony at pp. 14265-14268.

<sup>3</sup> Equally, recognizing that their action should not have been commenced in court but wishing to deplete the claimants' resources as much as possible, respondents attempted to pursue as much costly discovery as possible in the inappropriate Federal forum. Thus, respondents sought and obtained an *ex parte* order granting massive expedited discovery without apprising the court that there was no basis for such an extraordinary measure, as the dispute was more than a year old. Fortunately, once these facts were brought to the court's attention, the court vacated its *ex parte* order.

**Fraud in the Copyright Office and an Accounting:** Notwithstanding that Mr. Boyd and MAB, Inc. were the authors of ABTAR and are owners of the copyright in ABTAR and CATS, McMahan Securities, in order to maintain its baseless copyright claim, fraudulently filed an application for a copyright registration after it commenced the Federal litigation. In this application it asserted that it alone owns the copyright to CATS and it failed to disclose that CATS is either substantially identical to or derived from ABTAR and that Mr. Boyd and MAB, Inc. are the authors thereof, thereby perpetrating a fraud upon the United States copyright office.

### **SUMMARY OF DEFENSES TO COUNTERCLAIMS**

In retaliation for claimants' request for the return of their capital, respondents have asserted fourteen baseless causes of action against claimants, most of which were asserted in similar form in the Federal litigation.

**Misappropriation of Computer-Related Trade Secrets and Copyright Infringement:** As stated above, Mr. Boyd and MAB, Inc. created the ABTAR system while independent contractors for McMahan Securities and its predecessor firms. CATS is a derivative work of ABTAR, and, to the extent CATS has different features and functions than ABTAR, Mr. Boyd is an author in part of these enhancements. As the authors of both programs, Mr. Boyd and/or MAB, Inc. have an ownership interest and therefore cannot either infringe or misappropriate their own property. Irrespective of his interest in the system as an author, Mr. Boyd also has a 25% ownership interest in the systems by virtue of the March 17, 1983 agreement between Mr. Boyd and a McMahan Securities predecessor firm (the "March 1983 Agreement"). The rights granted to Mr. Boyd by virtue of the March 1983 Agreement did not terminate during Mr. Boyd's nine year tenure with McMahan Securities and its predecessor firms. If such rights had terminated, there would have been no reason for McMahan to agree to the language in the September Agreement regarding the ownership of ABTAR and CATS. Further, the September Agreement did not terminate Mr. Boyd's rights to the ABTAR and CATS system because McMahan breached several provisions of that agreement. Even assuming that the September Agreement is enforceable by respondents, Mr. Boyd expressly retained the right to develop derivative works of the ABTAR and CATS systems in that agreement. One of the nation's leading copyright experts, Morton Goldberg, Esq., testified that an individual may retain the right to produce derivative works even where he transfers ownership of the underlying work.<sup>4</sup>

Finally, there has been no evidence submitted that there has been any misappropriation of any entire computer system. Respondents have conceded that there was no misappropriation of any code from the CATS or the ABTAR systems, and there is no resemblance to any code written in Clipper to the Paradox code. Respondents' own witness, Philip Carapelle, testified that no code was copied.<sup>5</sup> The *only* evidence respondents have proffered is the alleged surface similarity of a few of the computer screens between the CATS and the Forum systems. The Forum screens, however, are substantially different from the CATS screens due to their ease of use, their increased functionality due to the pop up boxes, and the expanded use of color. Any alleged surface similarity in four of the screens is due to the fact that the screens of both systems are derivative of the ABTAR system and were all authored by Mr. Boyd. Finally, most of the information contained in the purportedly similar screens are governed by industry practice and are, therefore, not protectable under copyright or trade secret law.

---

<sup>4</sup> See Goldberg testimony at pp. 16505-16506.

<sup>5</sup> See Carapelle testimony at p. 13068-13070.

**Copyright Infringement and Unjust Enrichment for Compliance Manual:** The compliance manual was written by Mr. York as an independent contractor. Mr. York has the right to make a derivative work. Moreover, respondents acknowledge that they have benefitted from the use of the manual. Accordingly, respondents' claims of infringement and unjust enrichment are baseless.

**Violation of the Lantham Act and Misappropriation of Track Records:** According to AIMR standards, read into the record by respondent John Gordon ("Gordon"), performance data from a prior firm may be used if properly disclosed.<sup>6</sup> Under these standards, a manager must give credit for the financial performance to the prior firm and describe his or her responsibilities at the prior firm. It is undisputed that Mr. Boyd was the head of convertible trading during his entire tenure with McMahan Securities and that he had final authority on the trading floor. The track records of McMahan Securities utilized by Mr. Boyd and MAB, Inc. are properly footnoted with the information required by the AIMR standards.<sup>7</sup> In any event, respondents have shown no damages associated with their alleged misappropriation.

**Breach of Fiduciary Duties and Breach of Contract:** Any fiduciary duties claimants may have owed to respondents were limited to the duration of claimants' employment and/or partnership association with respondents. Prior to September 1, 1992, the termination of Mr. Boyd's association with respondents, there is no evidence that Mr. Boyd breached any of the fiduciary duties owed to his partners. Any capital that was raised and invested in Forum or the Forum entities was done so *after* Mr. Boyd left McMahan Securities. Certainly investment by other claimants in the new firm and other preparations to establish a new firm while they remained at McMahan Securities at McMahan's request is clearly appropriate.

Nor was McMahan Securities Amended Partnership Agreement breached by any investments in Forum. The investments were made after claimants served notice of withdrawal and during the period they temporarily remained at McMahan Securities at respondents' request. Claimants who displayed a gesture of good will in agreeing to ease the transition of their replacements should not have damages assessed against them. In any event, respondents have proven no such damages.<sup>8</sup>

**Misappropriation of Trade Secrets.** Respondents' allegations of misappropriation of research reports is baseless. It is a common practice in the securities industry now, and at the time in question, for analysts to take reports and models with them when they join a new firm. Moreover, the McMahan Securities research reports are circulated outside McMahan and thus are not secrets at all. In fact, McMahan Securities research reports were, until recently, readily available on Bloomberg. In addition, claimants were not told that they could not take the reports at issue. Finally, the reports were of little or no value to respondents. Securities research rapidly becomes outdated, and, as respondents' own

---

<sup>6</sup> See Gordon testimony at pp. 10833-10835.

<sup>7</sup> In addition, claimants' track records have been recalculated to account for the different cost and leverage structure utilized by claimants as compared to McMahan Securities.

<sup>8</sup> Although a cornerstone of respondents' Federal complaint and statement of claim, respondents have not vigorously pursued their "raiding" claim. Respondents' attempt to distance themselves from a raiding claim is likely due to the fact that raiding requires solicitation and an intent to harm which is not the case here. Any of the members of the research department of McMahan Securities who joined Forum did so on their own accord due to the unpleasant working conditions they encountered at McMahan Securities after Mr. Boyd left. Respondents now apparently concede that none of the claimants' had the requisite intent to harm respondents. Respondents have apparently attempted to twist their raiding claim into a breach of an oral contract not to hire any research members for an indefinite period. Respondents have presented no concrete evidence that a binding agreement not to hire research personnel, with the requisite consideration, was ever reached and/or that any such oral agreement is enforceable.

witness, Jay Glassman, testified that reports by the former researchers would not add to the credibility of the new staff with the customers.<sup>9</sup>

Next, claimants did not misappropriate any confidential customer information. As many witnesses testified, the convertible securities business is one of established relationships with a limited number of well known clients. To the extent claimants had in their possession any customer lists, these lists were of the kind turned over to claimants by respondents or removed from McMahan Securities without any restrictions.

With respect to respondents' allegations regarding the McMahan Securities private placement memorandum, respondents have submitted no evidence nor proffered any testimony that claimants duplicated any substantial provisions of the private placement memorandum. The similar sections are merely boilerplate provisions common in the industry. Furthermore, respondents have again submitted no evidence or testimony that indicates they have suffered any damages due to the alleged misappropriation. Next, despite respondents' claims of misappropriation of business structure, the business structure of claimant Founders Financial Group L.P. ("Founders") is not parallel to the McMahan entities. McMahan Securities has no corporate parent that mirrors the role of Founders, and it has no separate asset manager such as Forest Investment Management.

Finally, respondents' claims with respect to the Merrin ticketless entry system are nonsensical. Respondent Gordon was charged with implementing the Merrin system, and he failed to complete his task. Moreover, the McMahan Securities contract with Merrin expressly permitted Merrin to freely license the system to others including Forum. In any event, claimants did not and have never used the system developed by Merrin for McMahan Securities.

**Trade Disparagement and Tortious Interference:** Despite respondents' allegations to the contrary, claimants did not disparage McMahan Securities or its partners or employees. Any such statements that may have been made about the future viability of McMahan Securities were made by outsiders. Respondents' own witness, Deborah Hootman, who claimed to have difficulty finding investors for McMahan Securities, could not identify any specific disparaging statement or any specific declarant. Nor could she identify any investor who was lost by McMahan Securities as a result of the purported conduct.<sup>10</sup>

**Tortious Interference With Contractual Relations Among Parties and Employees:** As a matter of law, respondents can sustain no cause of action for tortious interference with contractual and business relations because all claimants, excluding Mr. Boyd, were at will employees who withdrew from the limited partnership pursuant to the terms of the partnership agreement.

**Unfair Competition and CUTPA:** As set forth with more particularity above, there has been no evidence introduced nor testimony received that claimants have engaged in any acts that constitute statutory or common law unfair competition.

**Unjust Enrichment:** Respondents have failed to establish the crucial element of a claim for unjust enrichment: that respondents did not receive value for the services provided by claimants during their employment. McMahan Securities received extensive and valuable services from claimants without any

---

<sup>9</sup> See Glassman testimony at pp. 13319-13320.

<sup>10</sup> See Hootman testimony at p. 13351.



complaint at the time the services were rendered.

**Breach of Fiduciary Duty in Connection With Renovation of the McMahan Securities Building:** Respondents rely entirely upon Mr. Boyd's May 9, 1991 estimated budget as the basis for this claim. However, Mr. Boyd's budget is clearly labelled "Preliminary" and was never intended as the final determination of the complete cost of the project. Respondents' own testimony has revealed that respondent Gordon was responsible for the building renovation project as of October 1991, and the record is replete with budgets and critical path analyses prepared by him as early as July and August of that same year. Moreover, several substantial changes to the proposed renovation were made after Gordon assumed control of the project in October. Those changes added significant costs to the renovation. Finally, respondents have submitted no evidence of any connection between Mr. Boyd's involvement with the renovation and any additional costs incurred. In fact, the vast majority of invoices submitted by contractors were submitted months after the date respondents concede Gordon took charge of the project.

**Respondents-Counterclaimants' Case Summary<sup>11</sup>**

Respondents-Counterclaimants are McMahan Securities Co. L.P. ("MSC"), McMahan & Co. ("MCM"), D. Bruce McMahan, Saul Schwartzman and John Gordon (collectively "Counterclaimants"). Respondents are Mark Plimpton, Scott Dillinger, Dominick DePinto and William Fertig. McMahan is an MSC General Partner. All of the other Respondents and Counterclaimants are limited partners in MSC, an NASD broker-dealer. Generally, Counterclaimants allege that the Claimants (all former partners and/or employees of MSC) as well as their newly-created broker-dealer, investment advisor, fund manager and related funds (Additional Counterclaim-Respondents; all, collectively, "Claimants") are jointly and severally liable for having -- in breach of their statutory, fiduciary and contractual obligations to MSC -- misappropriated from MSC its most valuable assets (including a copyrighted and trade secret computer trading system known as "CATS", customer information, research materials and a host of other protected assets), passed-off MSC's track records as their own, raided key employees of the firm, disparaged the firm to its customers so as to create doubts about its ability to survive the very torts being committed against it by Claimants, tortiously interfered with MSC's business relationships with its customers and employees, neglected duties to MSC (if not defrauded it) in connection with the acquisition and renovation of MSC's building, unjustly enriched themselves and committed other unlawful and deceitful acts to the substantial detriment and near destruction of MSC and for the purpose of providing Claimants' and their affiliated entities with a tremendous -- albeit illegally obtained -- running start in their efforts to compete directly against MSC.

Generally, Counterclaimants seek recovery for the following damages, many of which are recoverable under different or alternative legal theories:

***CATS System*** -- The record shows that Claimants, without lawful basis, directly copied all of the critical screens of CATS, its computer file structure and architecture and many of its unique features. Indeed, Claimants have admitted using CATS screens and user requirements, containing numerous proprietary formulas, as a "template" for Target (the Claimants' computer trading system). Applicable law provides that MSC is entitled to recover actual damages and

---

<sup>11</sup> For a fuller statement, see Respondents-Counterclaimants' pleadings and evidence presented.

the "infringers' profits" for copyright infringement of CATS and the larger of either type of damages for the misappropriation of CATS. Since CATS is not a product which is sold or licensed to the public, to determine actual damages from Claimants' infringement and/or misappropriation, the value of CATS to MSC must be assessed. The best and certainly the most conservative measure of such value is the actual cost to develop and create CATS through the time the Claimants left MSC. Such costs include the hardware, peripherals and software purchased specifically as part of the CATS development process. Similarly, the personnel cost of the individuals involved in the development process and expenses to help train certain of those people are also part of the costs to develop CATS.

In addition to actual damages, MSC is also entitled to recover the "infringers' profits." Under applicable law, gross revenues are the legal equivalent of infringers' profits where the infringement is willful. In the event non-willful infringement is found, net revenues may be awarded, but it is Claimants' burden to show any apportionment or deductions for expenses actually incurred specifically to generate revenues. (See Rx 199 for calculation of damages under such circumstances).<sup>12</sup> Recovery of Forum's gross revenues and Forest's incentive and management fees -- i.e., the "willful" measure of damages -- is appropriate. Claimants rely upon the Target system to trade and sell securities and to generate investment banking ideas -- i.e., in all of their revenue-generating activities. While Target is not a "black box" computer system, the critical role it plays in generating Claimants' revenues is well supported in the record: (i) despite the presence of numerous skilled traders and salespersons at Forum for several months, Claimants did not in fact start any trading or selling securities until Target was operational; (ii) Claimants' constant use and reliance on Target throughout the business day to generate trading and sales ideas; and (iii) Claimants' emphasis on Target in promoting its operations to its prospective customers and investors. Furthermore, requiring Claimants to disgorge their "profits" is appropriate both to compensate MSC for the injury it suffered and to prevent Claimants from being unjustly enriched from the wrongful use of MSC's property -- an essential purpose underlying the compensatory framework of copyright and trade secret laws.

Alternatively, Counterclaimants are entitled to "Running Start" or "Head Start" damages which fairly reflect the revenues unlawfully enjoyed by the Forum entities during the period of time they would still have been developing an operational computer trading system had Claimants not misappropriated and/or infringed CATS. The record shows that the Forum entities did not commence any revenue-generating operations, despite the presence of numerous skilled traders and salespersons, until Forum's Target computer system was operational. (Boyd 960, 1410-12; Carapelle 13038). Since undisputed expert testimony establishes that it would have taken Forum 18 to 24 months to develop the Target system independently of CATS and ABTAR in a "clean room" environment (Tinkel 12469-70), Counterclaimants are rightfully entitled to the revenues the Forum entities earned during this "head-start" period.<sup>13</sup>

---

<sup>12</sup> "Rx" refers to Respondents' Exhibits and "Cx" refers to Claimants' Exhibits.

<sup>13</sup> See also the testimony of Claimants' witness, Donough McDonough, at 15461-65; as to the law of Running Start damages, see, e.g., Reinforced Molding v. Electric Co., 592 F. Supp. 1083 (W.D.Pa. 1984), and cases cited therein.

**Track Records** -- In violation of applicable laws, rules and AIMR standards, the Claimants misappropriated and "passed-off" MSC's track records as their own. Boyd was not the sole person responsible for the performance reflected in the track records. In fact, many key MSC supervisory personnel, investment committee members, traders and most of the salespersons who helped to create the MSC track record used as their own by the Claimants did not join the Forum entities. But for the unlawful use of MSC's track records in Claimants' PPMs and other promotional materials, it is unlikely that Forum and Forest would have received any capital to invest and manage other than the Claimants' own monies. Without such additional capital, the Claimants would likely have been unable to commence any business operations and certainly would not have generated the revenues which they did. As a result, under applicable law, MSC is entitled to recover the Claimants' "profits." Similar to copyright law, "profits" mean gross revenues and it is the Claimants' burden to show any apportionment or deductions.

**Research Materials and Raiding of Research Personnel** -- As a result of the Claimants' theft of MSC's research files, research reports and related analyses and materials (both on paper and in electronic form) and the tortious raiding of nearly every MSC research analyst (directly contrary to Boyd's admitted agreement with McMahan not to hire any of MSC's research department and also in breach of contractual and fiduciary obligations), Forum unlawfully obtained a highly trained, specialized and largely irreplaceable convertible research department replete with all of the tools and materials MSC had spent millions of dollars to develop and produce. To determine the loss to MSC of these materials and its unique and highly skilled staff as well as the benefits derived by Forum from its improper conduct, the following damage elements must be considered: Compensation paid to MSC's research department to develop and produce the research materials misappropriated; Cost to train those claimants who became highly skilled and specialized convertible research analysts (or alternatively the cost to train MSC's replacement research staff as reflected in Rx 186B); Operating costs of the MSC research department (other than compensation) to develop and produce the misappropriated research materials; and Cost for the time spent to interview replacements for the raided research staff.

**Sales Customer Information** -- The Claimants misappropriated valuable sales customer information and used those materials at Forum to facilitate their sales effort -- particularly the sales efforts of the McNulty brothers. These materials not only contained the identity of MSC sales customers -- nearly half of which were not listed in publicly available directories of potential sales customers (see Rx 151) -- but detailed nonpublic information concerning particular customers' past transactions which provided insight into these customers' preferences. Adopting as conservative an analysis as possible, MSC seeks damages measured by Forum's sales revenues: (i) for which the McNulty brothers were listed as responsible at Forum, (ii) to MSC sales customers that the McNultys did not service while at MSC, (iii) whose names and past transactions were identified in the MSC customer materials the McNultys admitted taking and using and (iv) for only those sales which occurred in 1993. In addition, MSC is entitled to reimbursement of certain of its direct costs (travel and entertainment expenses) which were incurred in the development of the misappropriated sales information as further damages.

**Asset Management Customers** -- As a result of Claimants' disparagement and tortious interference, Claimants caused MSC's most valuable managed account (PRS) to limit and reduce its investment with MSC and invest instead with Claimants and caused several other potential

asset management customers, who were likely to become asset management accounts of MSC, to not invest with MSC but invest instead with Claimants. As a result of such tortious conduct, MSC should be permitted to recover those incentive fees it would have actually earned in 1993 had the monies which Claimants diverted to the Forum and Forest entities been invested with MSC.

***Compliance Policy Manual & Private Placement Memorandum*** -- Claimants took, marked-up and then used as their own MSC's compliance policy manual and private placement memorandum. By so doing, the Claimants unfairly reaped the benefits of what MSC had paid hundreds of thousands of dollars to create, thereby saving much or all of the costs MSC incurred to develop these materials. Accordingly, the proper measure of damage concerning these materials is the value of what the Claimants took, which is best determined by the actual cost of what MSC paid to develop these materials.

***Merrin Workproduct*** -- MSC incurred significant out-of-pocket costs in connection with its attempt to install and develop, in conjunction with Merrin, a sell-side ticketless entry system. MSC's attempt to develop and install this system was thwarted by Boyd's refusal to field test it. To add further injury, Claimants then enjoyed the benefits of the development costs funded by MSC when it installed this system at Forum. MSC seeks reimbursement for its out of pocket costs to fund this project which Boyd prevented from reaching fruition at MSC, but quickly utilized at Forum.

***Compensation to Claimants by MSC*** -- In numerous ways, Claimants breached their fiduciary, contractual and statutory obligations to MSC and engaged in disloyal conduct while employed by and/or partners of MSC unbeknownst at that time to the firm. Applicable law permits MSC to recover the substantial compensation which it paid to Claimants during the time they acted faithlessly and by which amounts they were unjustly enriched.<sup>14</sup>

***Building*** -- But for Boyd's materially false and misleadingly low budget, MSC would not have purchased its current building, the renovations of which cost over 500% more than Boyd estimated. In addition, during Boyd's supervision of the building renovations, he hired numerous contractors, subcontractors, architects and others with whom he had conflicting relationships which he did not disclose. Such conduct by Boyd was fraudulent and/or constituted a gross breach of his fiduciary duties, for which Boyd should be held liable for the out-of-pocket difference between what he said the renovations should cost and what they in fact cost.

---

<sup>14</sup> E.g., Maritime Fish Prod. Inc. v. World Wide Fish Prod. Inc. 100 A.D.2d 281, 474 N.Y.S.2d 281 (1st Dep't 1984).

**Affirmative Defenses to the Claims Made by the Boyd Claimants**

1. Claimants fail to state a claim upon which relief can be granted.
2. The claims are barred by the doctrines of waiver, ratification and estoppel in that, inter alia: a) the compensation decisions now being complained about were made in accordance with the agreed procedures; b) the Claimants acquiesced to the partnership's practice of withholding capital for contingencies in January 1992, Fall 1992 and at other times; c) no claim of contractual breach or to void the September 1, 1992 contract (Cx 33) was made until the amended pleadings were filed in this matter; and d) Claimants' bad faith and deceitful conduct estops them from any recovery.
3. The claims are barred by the doctrine of unclean hands.
4. The claims are barred as a result of Claimants' prior breaches of both oral and written agreements with Respondents.
5. The claims are barred by Claimants' illegal and/or fraudulent conduct.
6. The claims are barred on the grounds that Claimants have been paid everything they were due, which payments were accepted at the time without protest or reservation.
7. The claims are barred by the doctrine of accord and satisfaction.
8. To the extent Claimants are entitled to any recovery, Counterclaimants are entitled to offset such amounts against any recovery awarded on their counterclaims.
9. The Arbitrators lack jurisdiction to cancel or otherwise affect the validity of any of MSC's copyright registrations with the Copyright Office.
10. Because of the September 1, 1992 contract (Cx 33), the Claimants lack standing to pursue their claim that a fraud was committed on the Copyright Office.
11. The claims are barred by applicable statutes of limitation and/or the doctrine of laches in that, inter alia, such claims were not asserted on a contemporaneous basis, nor indeed until Respondents had taken numerous actions in reliance on Claimants' conduct which cannot now be undone.
12. Because of the Claimants' unlawful and tortious conduct as alleged in the Counterclaims, MSC was permitted to withhold Claimants' capital as an offset against the damages due to Counterclaimants.

### **RELIEF REQUESTED**

Claimants requested:

#### **APPENDIX - DAMAGE ALLOCATION AS OF NOVEMBER 1, 1996<sup>15</sup>**

- For claimants' First Claim for Return of Capital and Second Claim for Fraud, claimants seek damages in the amount of \$610,000 plus interest at the rate of return on funds invested by claimants into claimant Founders, the entity claimants invested those funds initially returned by McMahan Securities, plus punitive damages and attorneys' fees.
- For claimants' Third Claim for Unpaid Wages pursuant to the Connecticut General Statutes § 31-72, claimant M. McNulty seeks damages in the amount of \$330,000 plus interest at the rate of 10 percent pursuant to Connecticut General Statutes § 37-3a in the amount of \$126,575.25 and attorneys' fees; claimant Bunims seeks damages in the amount of \$21,146.70 plus interest in the amount of \$7,665.73 and attorneys fees; claimant Doris seeks damages in the amount of \$60,000 plus interest in the amount of \$23,013.70 and attorneys' fees; and claimant R. Boyd seeks damages in the amount of \$31,000 plus interest in the amount of \$11,790.41 and attorneys' fees.
- For claimants' Fourth Claim for Return of Capital Invested in McMahan Capital Management, Claimant M. Boyd seeks damages in the amount of \$8,199.90 plus interest at the rate of 10 percent in the amount of \$2,972.18.
- For Claimants' Sixth Claim for Vexatious Litigation, Claimants seek damages in the amount of \$4,155,429 plus interest at the rate of ten percent in the amount of \$1,378,691.29 plus attorneys' fees incurred in the *Federal litigation* totalling \$646,047.11, plus punitive damages and attorneys' fees in this arbitration.
- For Claimants' Seventh Claim for an Accounting of Proceeds Received from the CATS computer system, Claimants M. Boyd and M. Boyd, Inc. seek an accounting for the value of the proceeds received for CATS and damages in the amount of their respective shares of the total proceeds received.
- For Claimants' Eighth Claim for Fraud on the United States Copyright Office, Claimants seek to have the copyright registration obtained by Respondents for CATS be declared invalid and unenforceable.
- For Claimants' Ninth Claim for Tortious Interference with Business, Claimants seek damages in the amount of \$6,180,167.40 plus punitive damages and

---

<sup>15</sup> All interest is calculated up to and including 11/1/96. Claimants in no way waive any right to receive interest that will accrue from the date of this damage allocation until payment is made in full.

- attorneys' fees and seek to have Respondents enjoined from continuing such tortious conduct.
- For Claimants' Tenth Claim for Unfair Competition under the Trademark Act, Claimants seek damages in the amount of \$6,180,167.40 plus punitive damages and attorneys' fees and seek to have Respondents enjoined from continuing such unfair and deceptive conduct.
  - For Claimants' Eleventh Claim for Common Law Unfair Competition, Claimants seek damages in the amount of \$6,180,167.40 plus punitive damages and attorneys' fees and seek to have Respondents enjoined from continuing such unfair and deceptive conduct.
  - For Claimants' Twelfth Cause of Action for Violations of C.U.T.P.A., Claimants seek damages in the amount of \$6,180,167.40 plus punitive damages and attorneys' fees and seek to have Respondents enjoined from continuing such unfair and deceptive conduct.
  - That the Respondents, their successors and assigns, officers, agents, servants, employees and attorneys and all those persons in active concert or participation with them, or any of them, be preliminarily and then permanently enjoined and restrained:

From interfering or attempting to interfere with the use, sale, distribution and advertisement by Claimants, their licensees, successors and assigns, of the Forum Program and all derivatives thereof whether in connection with the business of the Claimants or otherwise;

From doing any other act or thing calculated or likely to cause confusion or mistake in the minds of the trade or the public or to deceive the trade or the public into the belief that the CATS Program and the ABTAR Program and all derivatives thereof are owned and/or were authored exclusively by Respondents or are the exclusive property of Respondents, either jointly or severally, and that the Forum Program or any derivative thereof is an infringement of the CATS Program or the ABTAR Program or any derivative thereof; and

From doing any other act or thing in derogation of the rights of M. Boyd and MAB, Inc. in, to and under the ABTAR and CATS Programs and all derivatives thereof; and

From otherwise competing unfairly with Claimants and injuring Claimants' business reputation.

Respondents requested:

Specifically, Counterclaimants plead the following claims and seek the relief outlined below:

**I. Misappropriation --**

**A. CATS System Trade Secrets**

- |   |              |
|---|--------------|
| (a) Infringer's Profits -- 1/1/93 - 12/31/94 (9/1/92@ \$227,552 per mo.) <sup>16</sup> [Rx 198]   | \$30,340,212 |
| (b) <u>Alternatively, Infringers' "Running Start"/Head Start Damages -- 1/1/93 - 6/1/94 (9/1/92@ \$172,323 per mo.) [Rx 198 &amp; Tinkel, 12469-70]</u> | \$22,976,407 |

<b>B. <u>Track Records (11/1/92 @ \$227,552 per mo.) [Rx 192]</u></b>	<b>\$30,340,212</b>
---	---------------------

**C. Research Materials and Raiding of Research Personnel**

- |   |             |
|---|-------------|
| (a) <u>Cost of Development of research material/skilled staff</u> |             |
| a) <u>Compensation (4/1/93 @ \$13,688 per mo.) [Rx 200]</u>       | \$1,825,131 |
| b) <u>Training costs (4/1/93 @\$1,138 per mo.) [Rx 201]</u>       | \$151,702   |
| c) <u>Operating costs (4/1/93 @\$6,435 per mo.) [Rx 202]</u>      | \$857,973   |
| (b) <u>Replacement of Staff (4/1/93 @ \$187 per mo.) [Rx 155]</u> | \$24,972    |

<b>D. <u>Compliance Policy Manual (9/1/92 @ \$486 per mo.) [Rx 192]</u></b>	<b>\$64,827</b>
---	-----------------

<b>E. <u>Sales Customer Information (9/1/92 @ \$5,539 per mo.) [Rx 203, 206]</u></b>	<b>\$738,561</b>
--	------------------

<b>F. <u>Private Placement Memorandum (9/1/92 @ \$2,421 per mo.) [Rx 162]</u></b>	<b>\$322,862</b>
---	------------------

<b>G. <u>Merrin Financial Ticketless Trading System Work Product (9/1/92 @ \$465 per mo.) [Rx 164]</u></b>	<b>\$62,053</b>
--	-----------------

<b>H. <u>Punitive Damages</u></b>	<b>\$ _____</b>
-----------------------------------	-----------------

**II. Breach of Fiduciary Duty --**

Damages sought, see No. 1. A through H.

**III. Breach of Contract --** (MSC Partnership Agreement, MSC Compliance Policy Manual and Boyd's agreement with McMahan not to hire MSC Research Department personnel):

Damages sought, see No. 1. A through G (except no prejudgment interest is sought).

**IV. Copyright Infringement --** (CATS):

<b>A. Actual Damages (9/1/92 @ \$4,453 per mo.) (plus either B or C) [Rx 147] and</b>	<b>\$593,763</b>
---	------------------

---

<sup>16</sup> Information in the parenthesis throughout denotes that prejudgment interest is sought at 9% per annum (CPLR § 5001) from the date indicated in the parenthesis to the date of the award, at the monthly rate indicated.



- B. **Infringers' Profits -- 1/1/93 - 12/31/94 (9/1/92 @ \$227,552 per mo.) [Rx 198]** \$30,340,212
- C. **Alternatively, Infringers' "Running Start"/Head Start -- 1/1/93 - 6/1/94 (9/1/92 @ \$172,323 per mo.) [Rx 198 & Tinkel, 12469-70]** \$22,976,407

V. **Copyright Infringement** -- (MSC's Compliance Policy Manual):

- A. **Actual Damages (1/1/93 @ \$486 per mo.) [Rx 192]** \$64,827

VI. **Lanham Act Violations** -- (Claimants' passing-off of MSC's track record as their own in their PPMs violates the Lanham Act (15 U.S.C. § 1051 et seq.) and applicable securities laws (see Rule 206(4)-1) and AIMR rules (Rx 165)):

- A. **Damages (11/1/92 @ \$227,552 per mo.) [Rx 192]** \$30,340,212
- B. **Statutory Attorneys Fees under the Lanham Act<sup>17</sup>** \$ \_\_\_\_\_

VII. **Tortious Interference** -- (With actual and prospective contractual and business relationships with MSC managed account and sales customers):

- A. **Managed Accounts (1/1/93 @ \$5,804 per mo.) [Rx 215]** \$773,805
- B. **Sales Customers (1/1/93 @ \$5,539 per mo.) [Rx 203, 206]** \$738,561
- C. **Punitive Damages** \$ \_\_\_\_\_

VIII. **Tortious Interference** -- (With actual and prospective contractual and business relationships among MSC and its partners and employees, by causing other Claimants to breach their fiduciary and contractual obligations to MSC and by raiding virtually MSC's entire research department):

A through H, see No. 1. A through H

- I. **Punitive Damages** \$ \_\_\_\_\_

IX. **Trade Disparagement** -- (False and disparaging statements concerning MSC):

- A. **Actual Damages (1/1/93 @ \$5,804 per mo.) [Rx 215]** \$773,805
- B. **Punitive Damages** \$ \_\_\_\_\_

X. **Unfair Competition** --

A through H, see No. 1. A through H

- I. **Managed Accounts (1/1/93 @ \$5,804 per mo.) [Rx 215]** \$773,805

XI. **Violation of Connecticut Statutes** -- (Deceptive trade practices, unfair competition and misappropriation of trade secrets in violation of Connecticut statutes (Conn. Gen. Stat § 35-50 et seq., § 42-110a et seq.)):

---

<sup>17</sup> See Centaur Communications Ltd., v. ASM Communications Inc., 830 F.2d 1217 (2d Cir. 1987).

**A. Misappropriation of Trade Secrets****(a) CATS System**

- |   |              |
|---|--------------|
| a) Infringers' Profits -- 1/1/93 - 12/31/94 [Rx 198]  | \$30,340,212 |
| b) Alternatively, Infringers' "Running Start"/Head Start damages -- 1/1/93 - 6/1/94 [Rx 198 & Tinkel, 12469-70] | \$22,976,407 |

- |  |           |
|--|-----------|
| (b) Sales Customer Information [Rx 203, 206] | \$738,561 |
|--|-----------|

**B. Unfair Competition and Deceptive Trade Practices**

- |   |              |
|---|--------------|
| (a) Track Records [Rx 192]  | \$30,340,212 |
| (b) Research Reports and Raiding Research Personnel [Rx 155, 200, 201, 202] | \$2,859,778  |
| (c) Compliance Policy Manual [Rx 192]                                       | \$64,827     |
| (d) Private Placement Memorandum [Rx 162]                                   | \$322,862    |
| (e) Merrin Financial Ticketless Trading System Work Product [Rx 164]        | \$62,053     |

- |                               |          |
|-------------------------------|----------|
| C. Statutory Punitive Damages | \$ _____ |
|-------------------------------|----------|

- |                             |          |
|-----------------------------|----------|
| D. Statutory Attorneys Fees | \$ _____ |
|-----------------------------|----------|

**XII. Unjust Enrichment -- (Receipt of substantial compensation by disloyal employees):**

- |   |             |
|---|-------------|
| A. Compensation paid to Faithless Employees from 8/1/92 forward (4/1/93 @ \$8,468 per mo.) [Rx 208] | \$1,129,039 |
|---|-------------|

- |                     |          |
|---------------------|----------|
| B. Punitive Damages | \$ _____ |
|---------------------|----------|

**XIII. Fraud and Breach of Fiduciary Duty in Connection with the Building --**

- |  |             |
|--|-------------|
| A. Actual Damages (2/1/92 @ \$11,893 per mo.) [Rx 211] | \$1,585,677 |
|--|-------------|

- |                     |          |
|---------------------|----------|
| B. Punitive Damages | \$ _____ |
|---------------------|----------|

**XIV. Unjust Enrichment -- (If MSC's Compliance Policy Manual, written by York for MSC, was not -- as York suggests -- an original work as MSC was led to believe, then York was unjustly enriched by the amount of monies MSC paid to him to write the Manual):**

- |   |          |
|---|----------|
| A. Actual Damages (9/1/92 @ \$486 per mo.) [Rx 192] | \$64,827 |
|---|----------|

- |                     |          |
|---------------------|----------|
| B. Punitive Damages | \$ _____ |
|---------------------|----------|

**XV. In addition to the specific relief sought on each of the foregoing counterclaims, Counterclaimants and Respondents seek generally reimbursement of their attorneys fees, costs (including court reporter costs) and forum fees in this matter.**

**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 confirmed copies of the Award while the original remain on file with the NASD.

Phillip Carapelle was dismissed with prejudice by the Counter-Claimants McMahan Securities, Co., L.P., D. Bruce McMahan, Saul Schwartzman, John Gordon and McMahan and Company on April 29, 1996.

**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. Respondent McMahan Securities Co., L.P. shall pay the following sums, inclusive of interest, to the following Claimants on their claims for payment of any form of employee compensation:
  1. Roderick Boyd \$ 5,550.00
  2. Judith Doris \$10,000.00
  3. Alan Bunims \$10,573.35
2. Respondent McMahan Securities Co., L.P. shall pay the following sums, inclusive of interest, to the following Claimants on their claim for return on capital:
  1. Joyce Blumenthal \$48,791.44
  2. Martha Raskin \$22,117.64
  3. Steven Jones \$ 5,604.43
  4. Walter McNulty \$11,059.50
  5. Judith Doris \$ 4,692.90
3. All other claims asserted by and plead by Claimants are dismissed in their entirety.
4. The Claimants, as listed below, shall pay to the Respondents/Counter-Claimants, McMahan Securities Co., L.P., McMahan and Company, D. Bruce McMahan, John Gordon, Saul Schwartzman, the following sums, inclusive of interest, on their claims for breach of fiduciary, contractual and statutory obligations, misappropriation of assets, tortious interference:

Founders Financial Group, L.P. and Forum Capital Markets L.P., jointly and severally;	\$ 500,000.00
Michael A. Boyd, Jr. Michael A. Boyd, Inc. Michael A. Boyd Pension jointly and severally	\$1,000,000.00
Terence M. York	\$ 400,000.00

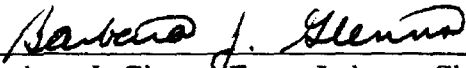
Robert Blumenthal	\$ 200,000.00
John F. LePore	\$ 150,000.00
Michael McNulty	\$ 125,000.00
Philip R. Platek	\$ 75,000.00
Arthur Raskin	\$ 50,000.00
Alan Bunims	\$ 50,000.00

5. All other claims asserted by and plead by the Respondents and Counter-Claimants are hereby dismissed in their entirety.
6. All Attorney fees, Court Reporter fees and other fees incurred by the parties to this arbitration shall be borne by the respective parties.

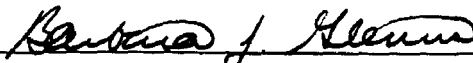
#### **FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the panel has determined that the forum fees shall be assessed equally against claimants collectively and respondents collectively. As a result, all interim forum fees deposited with NASD Regulation, Inc. shall be retained.

**ARBITRATOR'S SIGNATURE**

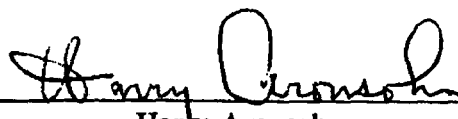
  
Barbara J. Glenns, Esq. - Industry Chairperson

I, **Barbara J. Glenns, Esq.**, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

  
Barbara J. Glenns, Esq.

\_\_\_\_\_  
Harry Aronsohn - Industry Arbitrator

I, **Harry Aronsohn**, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

  
Harry Aronsohn

\_\_\_\_\_  
Daniel B. Berkson, Esq. - Industry Arbitrator

I, **Daniel B. Berkson, Esq.**, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

\_\_\_\_\_  
Daniel B. Berkson, Esq.

Date of Decision: January 23, 1997

**ARBITRATOR'S SIGNATURE**

\_\_\_\_\_  
Barbara J. Glenns, Esq. - Industry Chairperson

I, **Barbara J. Glenns, Esq.**, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

\_\_\_\_\_  
Barbara J. Glenns, Esq.

\_\_\_\_\_  
Harry Aronsohn - Industry Arbitrator

I, **Harry Aronsohn**, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

\_\_\_\_\_  
Harry Aronsohn

\_\_\_\_\_  
Daniel B. Berkson, Esq. - Industry Arbitrator

I, **Daniel B. Berkson, Esq.**, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

  
\_\_\_\_\_  
Daniel B. Berkson, Esq.

Date of Decision: January 23, 1997