

**N.A.S.D. STIPULATED AWARD****NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimants

Alfred Hein  
Helen Hein  
Cynthia Stavrakis

96-01445

Name of Respondents

Mark Spiker  
MCC Securities Inc.

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**REPRESENTATION**

For Claimants: Jonathan L. Alpert, Esq. and Gregory J. Blackburn, Esq. of Alpert, Barker & Calcutt, P.A., Tampa, Florida.

For Respondents: John R. Kiefner, Jr., Esq. and Clifford J. Hunt, Esq. of Riden, Earle & Kiefner, P.A., St. Petersburg, Florida.

**CASE INFORMATION**

Statement of Claim filed on April 1, 1996, and amended October 4, 1996.

Claimants' Submission Agreement signed on March 28, 1996.

Statement of Answer filed by Respondents on May 30, 1996. Counterclaim of Respondents filed on June 28, 1996 and Answer to First Amended Statement of Claim filed on December 6, 1996.

Reply to Counterclaim dated July 15, 1996.

The Respondents did not execute Submission Agreements as required pursuant to Section 10314 of the Code of Arbitration Procedure.

**HEARING INFORMATION**

On December 9 and 10, 1996, hearings lasting three (3) sessions were conducted in Tampa, Florida.

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### CASE SUMMARY

Claimants alleged that upon their resignation of employment from Respondent MCC, Respondent MCC defamed them, tortiously interfered with their business relationships, breached a contract with them, completed their Forms U-5 in a false and defamatory manner, and violated the NASD Rules of Fair Practice. Claimants also brought claims against Respondent Spiker for defamation and violation of the NASD Rules of Fair Practice.

Respondents denied all allegations of wrongdoing and claimed that Claimants had wrongfully removed certain books and records from the premises of Respondent MCC. Respondents MCC and Spiker both maintained that Claimants' Forms U-5 were completed truthfully and in a non-defamatory manner. Respondents claimed that the arbitration proceeding commenced by Claimants was frivolous.

Respondent MCC counterclaimed against Claimants for breach of fiduciary duty, conversion, violation of Florida's Uniform Trade Secrets Act, tortious interference with business relationships, malicious prosecution, and abuse of process. Respondent Spiker counterclaimed against Claimants for malicious prosecution and abuse of process. Claimants denied all of Respondents' allegations raised in their counterclaims.

### RELIEF REQUESTED

Claimants requested actual damages in excess of \$4,000,000.00, punitive damages in an amount to be determined by the panel, interest, costs, and attorney's fees, amendment/expungement of negative information concerning this arbitration proceeding on their Forms U-4, U-5 and CRD records and any other appropriate relief which might be awarded by the panel. Claimants further requested a dismissal of all counterclaims.

Respondents requested dismissal of the claims against them and requested on their counterclaims damages of no less than \$1,000,000.00, plus punitive damages, costs, and reasonable attorney's fees as well as sanctions for bringing a frivolous action. Respondent Spiker further requested amendment/expungement of negative information on his Form U-4 and CRD record relating to this arbitration proceeding.

### 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 receipt of conformed copies of the Award while the originals remain on file with the NASD.

During the third arbitration session the parties achieved a resolution of all issues, the general terms of which have been made a part of the record of this proceeding and which will be embodied in a settlement agreement and general release between the parties. In addition, to effectuate the intent of the parties, the undersigned arbitrators make the award which follows.

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### **AWARD**

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

1. The uniform termination notices (Forms U-5) completed by Respondent MCC for each of the Claimants shall be amended and be and the same are hereby completely expunged of any negative information including affirmative answers to question fifteen (15) and the attachment of disclosure reporting pages (DRP-5) relating to those affirmative answers. Such expungement shall relate back to and be effective as of the date of original filing of the subject Forms U-5.
2. The Uniform Securities Registration Forms U-4 and all disclosure reporting pages for Claimants and Respondent Mark Spiker shall be expunged of any and all references to this arbitration action and shall bear no negative information relative to same. Such expungement shall relate back to and be effective as of the date of original filing of any Form U-4 bearing a reference to this action.
3. All references to this arbitration proceeding shall be expunged from the CRD records of the Claimants and the Respondent Mark Spiker.
4. All counterclaims against Claimant Alfred Hein are hereby dismissed.
5. All counterclaims against Claimant Helen Hein are hereby dismissed.
6. All counterclaims against Claimant Cynthia Stavrakis are hereby dismissed.
7. All claims against Respondent Spiker are hereby dismissed.
8. All claims against Respondent MCC are hereby dismissed.
9. The Claimants' requests for punitive damages are denied.
10. The Respondents' requests for punitive damages are denied.

### **OTHER COSTS**

Other than Forum Fees noted below, the parties shall each bear their own respective costs, attorneys fees, and expenses incurred by them in connection with this proceeding.

### **FORUM FEES**

Pursuant to Section 10203 of the Code of Arbitration Procedure, the panel has set Forum Fees in the amount of \$4,500.00 (\$1,500.00 X 3 sessions).

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1. The NASD shall retain the \$1,500.00 hearing session deposit previously paid by Claimants leaving a total balance due and owing of \$3,000.00.

a.) The Respondent MCC Securities, Inc. is assessed the sum of \$2,250.00.

b.) Claimants are assessed, jointly and severally, the sum of \$750.00.

2. The Respondents are liable, jointly and severally, and shall pay to the NASD the sum of \$500.00 representing the outstanding claim filing fee for the counterclaim.

3. The NASD shall retain the \$500.00 claim filing fee previously paid by the Claimants to the NASD.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

\_\_\_\_\_/s/\_\_\_\_\_  
Harlan Pomeroy, Esq.

\_\_\_\_\_/s/\_\_\_\_\_  
Richard J. Fuller

\_\_\_\_\_/s/\_\_\_\_\_  
Ronald J. Walton

Date of Decision: March 3, 1997