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**AWARD**

**NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

**Name of Claimants**

Dakin Securities, Inc.  
John H. Dakin

v.

Arbitration No.  
96-04626

**Name of Respondent**

Marc W. Vraciu

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**REPRESENTATION**

For Claimants: Terry M. Gordon, Esq., Epstein Becker & Green, San Francisco, California

For Respondent: Christine A. Djernaes, Esq., San Francisco, California

**CASE INFORMATION**

Statement of Claim filed October 17, 1996

Claimants' Submission Agreements signed: September 26, 1996

Statement of Answer filed April 7, 1997

Respondent's Submission Agreement signed March 3, 1997

**HEARING INFORMATION**

A telephone hearing on the motion was held on July 9, 1997, and lasted 1 session.

### **CASE SUMMARY**

Claimant alleged malicious prosecution for the prosecution by Respondent of NASD Arbitration #95-03743, Marc W. Vraciu v. Dakin Securities, Inc., and John H. Dakin.

Respondent denied the allegation of the claim, and asserted that arbitration #95-03743 was brought with probable cause and without malice.

### **RELIEF REQUESTED**

Claimant requested damages on behalf of Dakin Securities of \$84,265.61 for attorney's fees and costs plus an equal amount as punitive damages.

Claimant requested damages on behalf of John H. Dakin of \$10,000 for mental anguish plus \$50,000 as punitive damages.

Respondent requested dismissal of all claims.

### **OTHER ISSUES**

None.

### **AWARD**

On July 9, 1997, the undersigned panel, having read the pleadings and the motion papers, convened a telephone hearing to hear argument on the Respondent's motion to dismiss. The panel made the following determination:

1. The case is dismissed because as a matter of law a malicious prosecution claim cannot arise from the underlying arbitration proceeding, which was a contractual, not civil, proceeding.

### **FORUM FEES**

Pursuant to Section 10205 of the Code of Arbitration Procedure, the NASDR shall retain claimants' \$500 non-refundable filing fee and the \$750 hearing session deposit as an assessment of forum fees for 1 session.

7/11/97

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Allan Blau

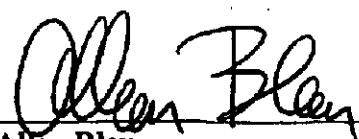
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*James L. Gault*  
James L. Gault

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Blake Weston

Date Served: November 11, 1997

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