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Representing Investors

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**VIA EMAIL SUBMISSION TO PUBCOM@FINRA.ORG**

November 17, 2017

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 17-34

Dear Ms. Asquith:

The purpose of this letter is to provide the Financial Industry Regulatory Authority, Inc. ("FINRA") with comments on the above referenced Regulatory Notice which was issued by FINRA on October 18, 2017.

I am an attorney whose practice is exclusively devoted to the representation of individual and institutional investors in their disputes with the securities industry. Moreover, I am the current Chairman of FINRA's National Arbitration and Mediation Committee ("NAMC") and a public member of the NAMC; the former Chairman of FINRA's Discovery Task Force Committee ("DTFC"); a former member of the Securities Investor Protection Corporation ("SIPC") Modernization Task Force; and a former President and current Director Emeritus of the Public Investors Arbitration Bar Association ("PIABA").

It is my understanding that the Regulatory Notice requests comment on the efficacy of allowing compensated non-attorney representative ("NAR") firms to continue to represent clients in the FINRA Dispute Resolution forum.

In May of 2017, in connection with my participation as a member of the faculty on the 2017 Securities Arbitration & Mediation Hot Topics program that was presented by the Association of the Bar of the City of New York, I authored the attached article entitled "Non-Attorney Representatives (NARs) – Do They Present a Clear & Present Danger to the Integrity of FINRA Arbitration?"

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Based on the information presented in my article, it is my opinion that NARs, who receive compensation for representing investors in arbitration proceedings, threaten FINRA's fair, efficient and effective venue of dispute resolution, constitute a clear and present danger to the investing public and must be immediately banned.

In the event that you should have any questions with respect to the preceding, please do not hesitate to contact me.

Very truly yours,

Maddox Hargett & Caruso, P.C.

*s/ Steven B. Caruso*

Steven B. Caruso

**Non-Attorney Representatives (“NARs”) – Do They Present a Clear & Present Danger to the Integrity of FINRA Arbitration?**

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**Introduction:**

Under the FINRA Code of Arbitration Procedure for Customer Disputes (“FINRA Code”), the representation of a party in a Financial Industry Regulatory Authority (“FINRA”) arbitration proceeding is governed by Rule 12208 (“Representation of Parties”) which states as follows:

**(a) Representation by a Party**

Parties may represent themselves in an arbitration held in a United States hearing location. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association.

**(b) Representation by an Attorney**

At any stage of an arbitration proceeding held in a United States hearing location, all parties shall have the right to be represented by an attorney at law in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless state law prohibits such representation.

**(c) Representation by Others**

Parties may be represented in an arbitration by a person who is not an attorney,

unless: state law prohibits such representation, or the person is currently suspended or barred from the securities industry in any capacity, or the person is currently suspended from the practice of law or disbarred.

(d) Qualifications of Representative

Issues regarding the qualifications of a person to represent a party in arbitration are governed by applicable law and may be determined by an appropriate court or other regulatory agency. In the absence of a court order, the arbitration proceeding shall not be stayed or otherwise delayed pending resolution of such issues.

A number of recent arbitration decisions have called into question the appropriateness and/or interpretation of subsection (c) of FINRA Code Rule 12208 (“Representation by Others”) in the context of non-attorney representatives (NARs”) who have represented investor Claimants in FINRA arbitration proceedings.

Discussion:

Based on a recent review of FINRA arbitration awards and various internet searches, there appear to be four (4) primary NAR firms that purport to be currently appearing in FINRA arbitration cases on behalf of investor Claimants: Cold Spring Advisory Group LLC, Vindication Recovery Services Inc., National Advisory Network, Inc. and Stock Market Recovery Consultants, Inc.

Cold Spring Advisory Group LLC (“CSAG”)

CSAG is a “consulting firm” that was incorporated in Nevada in 2013 and is currently based in New York City.

On its website ([www.coldspringadvisory.com](http://www.coldspringadvisory.com)), CSAG states that “we are not a law firm and do not provide legal advice. Cold Spring Advisory Group has a national network of lawyers specializing in securities arbitration and investment loss recovery. Our advisory group will recommend your case to a lawyer within our network who is best suited to fit



your special needs. Any lawyer we recommend for your case works on contingency so there are no hidden fees or additional expenses” and that “[o]nce preliminarily qualified, the client will enter into a retainer agreement with Cold Spring Advisory Group and remit the agreed upon consulting fee.”

CSAG’s website further states that “[o]ur panel of investment experts is comprised of former brokers with over 25 years of trading experience and branch management at prestigious brokerage firms throughout the country who have maintained books of business with clients worldwide. This direct experience gives us the ability to successfully identify broker misdeeds that may otherwise go unnoticed.”

While information as to CSAG’s purported “national network of lawyers specializing in securities arbitration and investment loss recovery” or its “panel of investment experts” who conduct potential case evaluations is noticeably absent from its website, a recent review of FINRA arbitration awards indicates that CSAG has been identified as the representative for investor Claimants in twenty two (22) reported awards<sup>1</sup> since April of 2016 – the majority of which were “simplified” arbitration proceedings that were decided based on the submission of written pleadings.<sup>2</sup>

Of these twenty two (22) arbitration awards, fourteen (14) awards resulted in all of the claims having been dismissed<sup>3</sup>; four (4) arbitration awards indicate that some or all of

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<sup>1</sup>/ These arbitration awards are identified by their applicable FINRA case numbers and the dates that the indicated awards were issued: 16-01643 (March 8, 2017); 16-00519 (March 1, 2017); 16-01655 (February 27, 2017); 16-00350 (February 24, 2017); 16-00441 (February 10, 2017); 15-01228 (January 20, 2017); 15-01225 (January 6, 2017); 16-01121 (December 28, 2016); 16-00673 (December 22, 2016); 15-03326 (October 24, 2016); 15-02865 (October 13, 2016); 16-00201 (September 30, 2016); 16-00786 (September 16, 2016); 15-03282 (August 18, 2016); 15-02851 (July 29, 2016); 16-00351 (July 19, 2016); 15-00673 (June 22, 2016); 15-03158 (June 3, 2016); 15-01416 (May 17, 2016); 15-03002 (May 16, 2016); 15-01160 (May 5, 2016); and 15-01911 (April 8, 2016).

<sup>2</sup>/ In simplified arbitrations, no hearing is held unless the claimant requests one. If no hearings are held, the arbitrator will render an award based on the pleadings and other materials submitted by the parties. *See, e.g., Simplified Arbitrations*, FINRA Office of Dispute Resolution, available at <http://www.finra.org/arbitration-and-mediation/simplified-arbitrations> (last visited April 1, 2017).

<sup>3</sup>/ These arbitration awards are identified by their applicable FINRA case numbers and the dates that the indicated awards were issued: 16-01643 (March 8, 2017); 16-00519 (March 1, 2017); 16-01655 (February 27, 2017); 15-01228 (January 20, 2017); 15-01225 (January 6, 2017); 16-01121 (December 28, 2016); 15-03326 (October 24, 2016); 16-00201 (September 30, 2016); 16-00786 (September 16, 2016); 15-03282 (August 18, 2016); 15-00673 (June 22, 2016); 15-03158 (June 3, 2016); 15-01416 (May 17, 2016); and 15-01160 (May 5, 2016).

the named Respondents did not participate in the arbitration proceedings and/or did not appear at the evidentiary hearing (which raises a substantial question as to the collectability of the monetary damages that had been awarded)<sup>4</sup>; and, in one (1) arbitration proceeding, in particular, not only were the investor claims dismissed in their entirety, but the investor Claimants were then assessed damages for a counterclaim that had been asserted by the Respondents as well as responsibility for the imposition of monetary sanctions that had been levied against the investor Claimants.<sup>5</sup>

It is also important to note that, in two (2) of the more recent awards involving CSAG, the arbitrators in those proceedings issued reasoned awards that included “findings” that were not only highly critical of the involvement of CSAG and its employee Jennifer Tarr, but both of which also determined that their involvement in these arbitration proceedings violated state law and constituted the unauthorized practice of law.<sup>6</sup>

Finally, notwithstanding CSAG’s representation that it “has a national network of lawyers specializing in securities arbitration and investment loss recovery” and that its “advisory group will recommend your case to a lawyer within our network who is best suited to fit your special needs,” in all twenty two (22) of the arbitration awards mentioned above, the CSAG employee who is identified as having represented the investor Claimants is the same Jennifer Tarr, mentioned above, who has “admitted” that she is not an attorney who is licensed to practice law.<sup>7</sup>

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<sup>4</sup> / These arbitration awards are identified by their applicable FINRA case numbers and the dates that the indicated awards were issued: 16-00350 (February 24, 2017); 16-00441 (February 10, 2017); 16-00673 (December 22, 2016); and 16-00351 (July 19, 2016).

<sup>5</sup> / This arbitration award is identified by its applicable FINRA case number and the date that the indicated award was issued: 15-01225 (January 6, 2017).

<sup>6</sup> / See, *Simon v. Aegis Capital Corp. et al.*, FINRA Dispute Resolution Arbitration No. 15-02865 (October 12, 2016) and *Halling v. Cape Securities Inc. et al.*, FINRA Dispute Resolution Arbitration No. 16-00519 (March 1, 2017), copies of which are attached to this submission under the respective designations of Attachments 1 and 2.

<sup>7</sup> / See, *Simon v. Aegis Capital Corp. et al.*, FINRA Dispute Resolution Arbitration No. 15-02865 (October 12, 2016).



Vindication Recovery Services Inc. ("VRS")

VRS is a company that was incorporated in New York in 2010 and is currently based on Long Island in Mount Sinai, N.Y.

On its website ([www.marketvindication.com](http://www.marketvindication.com)), VRS states that it "is an asset recovery team, we are not lawyers and do not render legal advice" and that it "can help protect your rights as an investor" because "[i]f wrongdoing did take place we will be able to identify it due to our unique and vast experience as industry insiders" with a "comprehensive asset recovery team experienced in every aspect of the brokerage industry."

VRS' website further states that it "utilizes in excess of 15 years of experience in detecting a stock broker's wrongdoing through portfolio analysis and market research" and that it "provide[s] a support system in assisting investors in recovery of stock market losses due to broker and other brokerage industry wrongdoing" and [the] "potential recovery of lost market assets through arbitration."

While information as to VRS' purported "team" of "industry insiders" who claim to have "unique and vast experience" is noticeably absent from its website, a recent review of FINRA arbitration awards did not provide any indication that VRS has been identified as the representative for investor Claimants in any reported awards.

It is noteworthy and material, however, that, in VRS' original 2010 incorporation filing with the New York State Department of Corporations, the Chief Executive Officer of the company is listed as Paul Shechter who, according to various internet postings, is alleged to be the same individual/former broker who was the subject of a FINRA disciplinary complaint filed in September 2013 (which had alleged abusive sales practices with at least 10 customers, unauthorized trading, unsuitable recommendations and the falsification of books and records) that was then settled in April 2014 with sanctions that included a two (2) year suspension and a fine of \$25,000<sup>8</sup> and that he

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<sup>8</sup>/ *See, Dept. of Enforcement v. Paul Shechter*, Disciplinary Proceeding No. 2009016159107 (Complaint dated September 26, 2013) and *Dept. of Enforcement v. Paul Shechter*, Disciplinary Proceeding No. 2009016159107

may be the same individual/former broker who, according to his BrokerCheck report, was also the subject of a regulatory enforcement complaint that had been initiated by the Illinois Securities Department in 2007, had been associated with a large number of brokerage firms that have been expelled from the securities industry, and has a history of at least five (5) reportable customer complaints.<sup>9</sup>

National Advisory Network, Inc. ("NAN")

NAN is a company that was incorporated in California in 2016 and is currently based in Long Beach, California.

On its website ([www.nationaladvisorynetwork.com](http://www.nationaladvisorynetwork.com)), NAN states that it "is a registered Legal Document Preparation Company and Certified Mediation firm. Experts in consumer protection laws and laws governing the sales of securities, joint ventures and limited partnerships, National Advisory Network specializes in assisting clients with resolving disputes with investment companies that violate industry laws and regulations."

NAN's website further states that it "[i]f you have an investment that hasn't been performing the way you were told it would, it's probably worth looking into. We have a specific department devoted solely to research and investigation in order to determine if there are any red flags about your current investments. If there's something that looks a little funny, we're more than happy to guide you through the steps that you can take to address the situation properly."

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(Settlement dated April 28, 2014), which are respectively available at <http://disciplinaryactions.finra.org/Search/ViewDocument/34487> and <http://disciplinaryactions.finra.org/Search/ViewDocument/35769> (last visited April 1, 2017).

<sup>9</sup> / FINRA collects, compiles, organizes, indexes, digitally converts and maintains regulatory data from registered persons, member firms, government agencies and other sources and maintains the data in its proprietary Central Registration Depository ("CRD<sup>®</sup>") database and system. FINRA releases portions of such data through FINRA BrokerCheck, which provides data from the CRD system to the investing public. [See, *BrokerCheck Report for Paul Stuart Shechter*, CRD # 2589423, available at <https://brokercheck.finra.org/individual/summary/2589423> (last visited March 31, 2017).



While information as to NAN's purported "department" of "experts in consumer protection laws and laws governing the sales of securities" is noticeably absent from its website, a recent review of FINRA arbitration awards did not provide any indication that NAN has been identified as the representative for investor Claimants in any reported awards.

Stock Market Recovery Consultants, Inc. ("SMRC")

SMRC is a company that was formed in 2003 and is currently based on Long Island in Uniondale, N.Y.

On its website (<http://1800stockloss.com>), SMRC states that its "objective is to provide professional, affordable representation for burnt investors through negotiation and arbitration" and that it "offers a valuable service by representing investors suffering from investment losses with the expertise and experience of many years in the securities industry to successfully recover your money."

SMRC's website further states that "[w]e exclusively represent the burnt investor, and have extensive experience in the process of securities related claims before FINRA. We help investors recover money that was lost as a result of fraud, negligence and other misconduct."

The co-founders of SMRC are stated to be Benjamin Lapin, a non-attorney, who purports to be "[r]ecognized as an expert in securities arbitration" with "an extensive trading background of over 20 years [who] has been involved in over 1000 securities disputes" and Mitchell Markowitz, another non-attorney, who purports to be "a recognized expert in matters relating to investment fraud in the financial services industry and is highly experienced in dealing with regulatory agencies."

While information as to the purported recognition of the expertise of Messrs. Lapin and Markowitz and/or their experience with arbitration proceedings and/or trading is noticeably absent from SMRC's website, according to a May 2010 article that appeared in The New York Times, it was alleged that Mr. Markowitz appears to have been the

same individual who had pled guilty in Essex County Superior Court, in New Jersey, to criminal charges that involved an attempt to collect nearly one million dollars as part of an insurance fraud scam designed to cash-in on a million dollar insurance policy.<sup>10</sup>

A recent review of FINRA arbitration awards indicates that SMRC has been identified as the representative for investor Claimants in eighty eight (88) reported awards since August of 2004 – and while a detailed analysis of the results of those awards are beyond the scope of this article, it is noteworthy that The New York Times, in its May 2010 article, concluded that “[w]hen the cases make it to a panel of arbitrators, however, the crusaders of Coney Island Avenue [i.e., SMRC] usually go home empty-handed; in a couple of cases, their clients were even told to pay the brokerage house.”<sup>11</sup>

### Conclusion:

“FINRA operates the largest securities dispute resolution forum in the United States, and has extensive experience in providing a fair, efficient and effective venue to handle a securities-related dispute.”<sup>12</sup>

When victims of misconduct by their investment professionals are potential prey for NARs who avoid complete transparency of their qualifications, it suggests a scenario which threatens FINRA’s “fair, efficient and effective venue” of dispute resolution and constitutes a clear and present danger to the investing public.

When victims of misconduct by their investment professionals are potential prey for NARs who avoid complete transparency of the material aspects of their business and/or employment histories, it suggests a scenario which threatens FINRA’s “fair, efficient and

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<sup>10</sup> / See, *Swatting at Wall Street From a Bunker in Brooklyn*, The New York Times (May 21, 2010), available at <http://www.nytimes.com/2010/05/23/nyregion/23critic.html> (last visited April 1, 2017) (“Mr. Markowitz pleaded guilty in 2004 to insurance fraud in a million-dollar scam involving jewelry”). See, also, *N.Y. Insurance Adjuster, Four Others Plead Guilty to Million Dollar Scam*, Insurance Journal (April 28, 2004), available at [www.insurancejournal.com/news/east/2004/04/28/41627.htm](http://www.insurancejournal.com/news/east/2004/04/28/41627.htm) (last visited April 1, 2017).

<sup>11</sup> / See, *Swatting at Wall Street From a Bunker in Brooklyn*, The New York Times (May 21, 2010), available at <http://www.nytimes.com/2010/05/23/nyregion/23critic.html> (last visited April 1, 2017).

<sup>12</sup> / See, *Arbitration and Mediation*, FINRA Office of Dispute Resolution, available at <http://www.finra.org/arbitration-and-mediation> (last visited April 1, 2017).

effective venue” of dispute resolution and constitutes a clear and present danger to the investing public.

And when victims of misconduct by their investment professionals are potential prey for NARs who are permitted to represent investor Claimants without any oversight by the regulatory community and within an atmosphere that does not require any ethical accountability by NARs, it suggests a scenario which threatens FINRA’s “fair, efficient and effective venue” of dispute resolution and constitutes a clear and present danger to the investing public.

Date Submitted: April 3, 2017



**AWARD**  
**FINRA DISPUTE RESOLUTION**

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CASE #: 15-02865

Jay R. Simon vs. Aegis Capital Corp., Robert Jay Eide, Kevin C. Meade, Nicholas Francis Milano, Anthony Michael Monaco, Sr., Jonathan Edward Rago, George Gregory Kott, and Kevin Charles McKenna

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**REPRESENTATION OF PARTIES:**

For Claimant Jay R. Simon, hereinafter referred to "Claimant": Hilton M. Weiner, Esq., Law Office of Hilton M. Wiener, New York, New York.

For Respondents Aegis Capital Corp., Robert Jay Eide, Kevin C. Meade, Nicholas Francis Milano, Anthony Michael Monaco, Sr., and Jonathan Edward Rago, hereinafter collectively referred to as "Respondents," and George Gregory Kott and Kevin Charles McKenna: Gregg J. Breitbart, Esq., Kaufman Dolowich & Voluck LLP, Boca Raton, Florida, and Rina Bersohn, Esq., Kaufman Dolowich & Voluck LLP, New York, New York.

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**NATURE OF DISPUTE: Customers vs. Member and Associated Persons**

Statement of Claim filed on or about: October 21, 2015.

Amended Statement of Claim filed on or about: March 29, 2016.

Statement of Answer to Statement of Claim filed by Respondents on or about: December 23, 2015.

Statement of Answer to Amended Statement of Claim filed by Respondents on or about: April 19, 2016.

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**CASE SUMMARY:** In the Statement of Claim, Claimant asserted the following causes of action: 1) suitability; 2) churning; and 3) failure to supervise. In the Amended Statement of Claim, Claimant added an additional cause of action for unauthorized trading. The causes of action relate to Claimant's purchase of shares in GT Advanced Technologies, Kandi Technologies, and Taser International, Inc.

In the Answer to the Statement of Claim and Answer to Amended Statement of Claim, Respondents denied the allegations in the Statement of Claim and Amended Statement of Claim and asserted various affirmative defenses.

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**RELIEF REQUESTED:** In the Statement of Claim and Amended Statement of Claim, Claimant requested an award representing the net out-of-pocket losses of \$29,806.00 and case preparation costs of \$3,500.00 for a total award of \$33,306.00, and such other and further relief as the Arbitrator deems just and equitable under the circumstances.

In the Answer to the Statement of Claim, Respondents requested dismissal of the Statement of Claim, and assessment of all forum fees against Claimant. Respondents Milano, Rago, and Meade requested that this matter be expunged from their records maintained by the Central Registration Depository (“CRD”), in accordance with applicable rules and procedures.

In the Answer to the Amended Statement of Claim, Respondents requested dismissal of the Amended Statement of Claim, and assessment of all forum fees against Claimant. Respondents Milano, Rago, and Meade did not request expungement in the Answer to the Amended Statement of Claim.

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FINDINGS: Claimant’s original and amended Statements of Claim (“SOC” and “ASOC,” respectively) and Final Submission (“FS”) were filed on October 21, 2015, March 29, 2016, and July 29, 2016, respectively, by Cold Spring Advisory Group, LLC (“CSAG”) and its representative, Jennifer Tarr, which collectively was Claimant’s representative until September 6, 2016.

In Claimant’s ASOC and FS, Claimant alleges three causes of action against Respondents for suitability, churning, and failure to supervise and seeks recovery of \$29,806.00 for losses incurred plus “case preparation costs” of \$3,500.00. Respondents’ representatives, Gregg J. Breitbart, Esq., and Rina Bersohn, Esq., both of whom are admitted to practice law in New York, but not in Arizona, and are members of the New York law firm of KAUFMAN DOLOWICH & VOLUCK LLP, filed Respondents’ Answer to Claimant’s SOC and ASOC and Respondents’ FS, in which they deny Claimant’s causes of action, both from an evidentiary and legal standpoint. Mr. Breitbart and Ms. Bersohn have represented Respondents throughout this arbitration.

The following constitutes the undersigned Arbitrator’s Findings, Conclusions and Award in this matter after having reviewed all of the parties’ pleadings and submissions, the applicable provisions of the FINRA Code of Arbitration Procedure for Customer Disputes and relevant and applicable federal and Arizona law cited by Respondents—other than for two FINRA Rules, Claimant cited no authority in support of his claims—the undersigned Arbitrator finds, concludes and orders as follows:

### **Claimant’s Representation**

Rule 12208(c) of the FINRA Code of Arbitration Procedure provides that “[p]arties may be represented in an arbitration by a person who is not an attorney, **unless ... state law prohibits such representation.**” (Emphasis added). “The Arizona Supreme Court has exclusive jurisdiction over the regulation of the practice of law in Arizona.” *State v. Eazy Bail Bonds*, 224 Ariz. 227, 229, ¶ 9, 229 P.3d 239, 241 (App. 2010). Under the Arizona Supreme Court’s rules, the representation of a party in an arbitration by another person constitutes the “practice of law.” Ariz. Sup. Ct. R. 31(a)(2)(A)(3). By this rule, the Arizona Supreme Court prohibits the representation of a party in an arbitration conducted in Arizona by anyone who is not admitted to practice law in Arizona. See Ariz. Sup. Ct. R. 31(b). The Arizona Supreme Court provides an exception under its rules that allows a *lawyer* (such as Respondents’ representatives who are admitted to practice law in a state other than Arizona, to represent a party in an arbitration when

that arbitration is conducted in Arizona and involves federal law. See Ariz. Sup. Ct. R. 31(d)(27) and Ariz. Sup. Ct. R. 42, E.R. 5.5(c)(2 and 3) and (d). However, CSAG and its representative, Jennifer Tarr, have admitted that they are not licensed to practice law in Arizona or any other State.

In light of the above, both Claimant's and Respondents' representatives were ordered to submit briefs and authority by September 9, 2016 on the issue of whether or not CSAG and Ms. Tarr's representation of Claimant was authorized. Instead of submitting a brief, CSAG and Ms. Tarr withdrew as Claimant's representative on September 6, 2016 and two days later on September 8, 2016, Hilton M. Wiener, Esq., who is admitted to practice law in the State of New York, filed his Notice of Appearance as Claimant's representative.

Respondents submitted their brief arguing that CSAG and Ms. Tarr were not authorized to represent Claimant, that Claimant's "last-minute" substitution of Mr. Weiner as Claimant's representative was untimely in light of the fact that CSAG and Ms. Tarr had prepared and filed all of the pleadings in support of Claimant's claims and had participated in discovery and this arbitration for over a year. Accordingly, Respondents asked that all of Claimant's causes of action against Respondents be dismissed, which in light of CSAG and Ms. Tarr's violations of Rule 12208(c) and Arizona law, would be appropriate. See, e.g., *Sternberger v. Gilleland*, No. CV-13-02370-PHX-JAT, 2014 WL 3809064, at \*12 (D. Ariz. Aug. 1, 2014) (striking pleading because it was filed by a non-attorney); *Villone v. United Parcel Services, Inc.*, No. CV-09-8213-PCT-LOA, 2009 WL 4824796, at \*1 (D. Ariz. Dec. 9, 2009) (holding that if plaintiff, who had been represented by a non-lawyer, wanted to allege a claim, he would "need to sign an amended complaint and represent himself or [he would] be allowed a reasonable opportunity to retain a lawyer, appropriately licensed to practice law in Arizona ... to file an Amended Complaint **or [his] Complaint may be dismissed.**" (Emphasis added)).

Based on the foregoing, **IT IS HEREBY ORDERED that under Rule 12208(c) of the FINRA Code of Arbitration Procedure, as limited by Arizona law, CSAG and Ms. Tarr cannot and could not represent Claimant in this arbitration.** See *Eazy Bail Bonds, supra*, 224 Ariz. at 229–30, ¶¶ 11–15, 229 P.3d at 241–42 (holding that appearance of, and pleadings filed by, non-attorney as party's representative were defective because such constituted prohibited practice of law, resulting in judgment for other party); see also, *Shufelt v. Criswell*, No. 2 CA-CV 2012-0024, 2012 WL 3044287, at \*1, n.1 (App. July 26, 2012) (holding that non-attorney could not represent appellant in an appeal); *Tompkins v. Bayview Loan Servicing, L.L.C.*, No. 1 CA-CV 10-0548, 2011 WL 2739034, at \*1 (App. July 14, 2011) (same).

### **Consideration of CSAG and Ms. Tarr's Prior Submissions**

Based on the foregoing authority, the undersigned Arbitrator could dismiss Claimant's ASOC, as Respondents have requested, and the undersigned Arbitrator could refuse to consider any of the Claimant's submissions that CSAG and Ms. Tarr previously filed on his behalf, including any of the facts and arguments set forth therein in making a determination about whether or not Claimant is entitled to an Award against Respondents based on the claims stated in Claimant's ASOC.

Instead of filing a new SOC and FS, as part of Mr. Wiener's Notice of



Appearance, he stated that he “adopt[s] all pleadings and submissions previously filed on Claimant’s behalf.” However, under the above authority, the mere statement that he adopts everything that CSAG filed is insufficient to make those pleadings and submissions qualified for consideration. Either Claimant or his newly designated legal representative had the opportunity to sign and file, but did not, a *new* SOC and FS, both of which could have more adequately restated Claimant’s claims and provided supporting legal authority in contrast to CSAG’s deficient pleadings. Moreover, Mr. Weiner’s mere “adoption” of CSAG’s pleadings is defective in light of the fact that the second FS that he submitted is not a new submission at all because it is dated some six weeks before he filed his notice of appearance in this matter.

Nevertheless, giving Claimant the benefit of the doubt and his “day in court,” the undersigned Arbitrator has reviewed Claimant’s ASOC and his FS that CSAG and Ms. Tarr filed on his behalf, including the facts, claims, arguments and evidence contained therein, as well as all of Respondents’ defenses, arguments and authority and evidence they have submitted. Although FINRA arbitration rules do not provide for explained decisions in simplified arbitrations, such as this arbitration, the undersigned Arbitrator feels that it is important for Claimant to understand why he is not entitled to recover any damages from Respondents under his claims as presented in his ASOC and FS. Based on a review of all of the evidence submitted in this matter by both Claimant and Respondents, the undersigned Arbitrator finds and concludes that ***Claimant has not sustained his burden of proof on any of his claims.***

### **Findings and Conclusions re Claimant’s Claims**

Based on a review of all of the evidence submitted by both Claimant (notwithstanding the fact that the evidence submitted by CSAG and Ms. Tarr could be disregarded) and Respondents, the undersigned Arbitrator makes the following findings of facts and conclusions of law:

1. During the year prior to and the year after Claimant opened his non-discretionary account at Respondent Aegis Capital Corp. (“Aegis”) in 2014, he had accounts at five other brokerage firms, including the firm that Respondents Jonathan Rago and Nicholas Milano were at and who handled Claimant’s account there before moving to Aegis.
2. For his accounts at the five other brokerage firms, as well as for his account at Aegis, Claimant knowingly executed and understood the new account forms in which he stated that his net worth was over \$1 million, he owned his own business and earned over \$100,000.00 a year, he had over \$100,000.00 in liquid assets, his investment objective was either speculation or growth, his risk tolerance was high, and in some instances, even “maximum” risk, and he understood that he could lose his entire investment as a result of his practice of short-term trading and buying high risk and speculative stocks.
3. In all of the brokerage accounts described above, Claimant traded low-priced, high risk, speculative stocks on a short-term basis, which for the most part, resulted in losses ranging from a few dollars to thousands of dollars, including the losses he incurred in his Aegis account.

4. Claimant's trading activity in his Aegis account was essentially the same type of trading that he did in his other brokerage accounts and resulted in similar losses, which are the basis for his claims against Respondents.
5. The three stocks that Claimant bought and sold in his Aegis account, which resulted in an aggregate loss of over \$29,800.00 for which he now seeks recovery from Respondents, are the same type of speculative, low-priced stocks that he bought and sold in his five other brokerage accounts and included one of the same stocks that Claimant bought and sold for a small profit in one of his other brokerage accounts before he opened his account at Aegis.
6. Contrary to Claimant's assertions, the credible evidence shows that Respondents Rago and/or Milano, who executed the trades of those stocks in Claimant's account at Aegis, discussed the stocks with Claimant and did not withhold any relevant information from Claimant before they executed those trades, which Claimant authorized.
7. That Claimant knew about and authorized the trades of the three stocks in question is further demonstrated by the fact that Claimant paid for all of those stock purchases after the trades were made, he never raised any objection to those trades, and he continued doing business with Respondents. Moreover, in at least one instance, Respondent Milano actually dissuaded Claimant from buying more shares of one of the stocks.
8. Claimant traded in just three stocks in his Aegis account during a six-month period, which trades he authorized, and such trading was not out of line with his past trading history or unreasonable or unsuitable in light of his stated investment objectives and risk tolerance, which Respondents were fully aware of when those trades occurred.
9. In light of Claimant's stated financial condition and his own trading choices and history, his total investment of approximately \$50,000.00 in the stocks in question at Aegis was not overly concentrated.
10. Based on the above facts and evidence, Claimant, who was an experienced stock trader, was a stock speculator and the stocks that were traded in Claimant's Aegis account were suitable.
11. Under the applicable law, Claimant has not met his burden of proving the stocks in question were unsuitable, that the purchases of those stocks were unauthorized, or that Respondents churned his account, and Claimant's allegations of unsuitability, unauthorized trading and churning lack any merit.
12. Based on the above facts, evidence, conclusions and applicable law, Claimant has not met his burden of proving that Respondents Aegis, Robert Eide, Kevin Meade, and Anthony Monaco, Sr., failed to properly supervise Respondents Rago and Milano, and Claimant's claim of improper supervision lacks any merit.

***Therefore, IT IS ORDERED that Claimant is entitled to No Award against Respondents either because of (a) the invalidity of Claimant's prior submissions,***

***and/or (b) the evidence submitted by Claimant, as refuted by Respondents, is insufficient.***

***IT IS FURTHER ORDERED that Claimant shall be responsible for 100% of the FINRA forum fees related to this arbitration.***

***IT IS FURTHER ORDERED that Claimant and Respondents shall bear their own attorneys' fees and any other fees incurred for their respective representations.***

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AWARD: The Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Claimant's claims are denied in their entirety. Claimant is entitled to no award against Respondents either because of (a) the invalidity of Claimant's prior submissions, and/or (b) the evidence submitted by Claimant, as refuted by Respondents, is insufficient. 2) Claimant and Respondents shall bear their own attorneys' fees and other fees incurred for their respective representations. 3) All other relief requests are denied. 4) FINRA Office of Dispute Resolution shall retain the \$600.00 filing fee that Claimant deposited previously. 5) The Arbitrator has provided an explanation of his decision in this Award. The explanation is for the information of the parties only and is not precedential in nature.

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OTHER FEES: FINRA Office of Dispute Resolution has previously invoiced Respondent Aegis Capital Corp. the \$750.00 Member Surcharge Fee and \$1,750.00 Member Process Fee.

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OTHER ISSUES: The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

On December 9, 2015, Claimant dismissed with prejudice Respondents George Gregory Kott and Kevin Charles McKenna.

The Arbitrator notes that in the Answer to the Statement of Claim, Respondents Milano, Rago, and Meade requested that this matter be expunged from their records maintained by the CRD. The Arbitrator also notes that Respondents Milano, Rago, and Meade did not request expungement in the Answer to the Amended Statement of Claim. As such, the Arbitrator did not rule on the merits of Respondents Milano, Rago, and Meade's request that this matter be expunged from their records maintained by the CRD.



**ARBITRATOR**

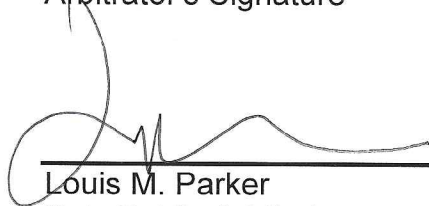
Louis M. Parker

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Arbitrator's Signature



Louis M. Parker  
Sole Public Arbitrator

10/12/2016

Signature Date

October 13, 2016  
Date of Service (For FINRA-DR office use only)

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Tom Halling

Case Number: 16-00519

vs.

Respondents  
Cape Securities Inc.,  
Lon Charles Faccini, Jr.,  
and Michael Allen Lovett

Hearing Site: Kansas City, Missouri

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Nature of the Dispute: Customer vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant Tom Halling: Jennifer Tarr, Cold Spring Advisory Group, New York, New York.

For Respondents Cape Securities Inc. ("Cape Securities"), Lon Charles Faccini, Jr. ("Faccini"), and Michael Allen Lovett ("Lovett"): Judy A. Newcomb, Esq., Cape Securities, Inc., Foley, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: February 16, 2016.  
Claimant signed a Submission Agreement: February 16, 2016.  
Claimant filed an Answer to Respondents' Amended Counterclaim on or about: January 10, 2017.

Statement of Answer and Counterclaim filed on or about: April 18, 2016.  
Cape Securities signed a Submission Agreement: April 14, 2016.  
Faccini signed a Submission Agreement: April 15, 2016.  
Lovett signed a Submission Agreement: April 22, 2016.  
Amended Answer and Counterclaim filed on or about: November 30, 2016.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability, failure to supervise, and breach of fiduciary duty. Claimant alleged that Respondents made unsuitable recommendations and over-concentrated his account with various investments, such as FirstHand Technology Value Funds, Amarin Corp., Kior, Inc., and Magic Jack Vocal, and that he lost nearly \$20,000 in only 13 months after opening his account at Cape Securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Respondents asserted the following causes of action in their Amended Counterclaim: breach of contract and abuse of process. Respondents alleged that Claimant failed to notify them in a timely fashion after receiving the trade confirmations of any errors, and therefore, Respondents reasonably assumed that the activity in Claimant's account was consistent with Claimant's directions and stock strategy.

Unless specifically admitted in his Answer, Claimant denied the allegations made in the Amended Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

Compensatory Damages:	\$ 19,772.00
Punitive Damages:	\$ 27,128.00
Costs:	\$ 2,500.00
Other:	Unspecified

In the Amended Statement of Answer, Respondents requested that each and every claim made by the Claimant be denied, that Claimant take nothing by way of the Statement of Claim, that Respondents be awarded their costs and attorneys' fees, that this matter be expunged from any and all regulatory records of Respondents, that Claimant be assessed all costs and attorneys' fees Respondents will incur to expunge their regulatory records, that all FINRA forum fees be assessed to Claimant, and for such other relief and further as the Arbitrator deems just and proper.

In Respondents' Amended Counterclaim, they requested:

Compensatory Damages:	\$ 40,000.00
Attorneys' Fees:	Unspecified
Costs:	Unspecified
Other Monetary Relief:	Unspecified
Expungement	

In the Claimant's Answer, he requested that the Arbitrator deny the relief sought by Respondents in their Amended Answer and Counterclaim.

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

The Arbitrator acknowledges that she has read the pleadings and other materials filed by the parties.

On or about June 22, 2016, Respondents submitted a Summary of Additional Submission of Evidence. On or about June 22, 2016, Claimant filed a Final Submission.

On or about July 25, 2016, the Arbitrator requested that the parties provide any additional or supplementary materials to support their requests for fees on or before August 3, 2016. On or about August 3, 2016, Claimant filed a Request for Fees and Damages. On or about August 3, 2016, Respondents filed an Itemization of Damages.

On or about September 12, 2016, FINRA informed the parties that it had received the Arbitrator's ruling on the merits of Claimant's claim, but that a hearing was needed to determine Respondents' requests for expungement. On or about October 17, 2016, Respondents notified FINRA that they were no longer requesting expungement in this matter.

On November 1, 2016, FINRA notified the parties that because Respondents' Counterclaim requested unspecified monetary damages, a panel of three arbitrators would be appointed pursuant to Rule 12401(c) unless the parties agreed to have this case proceed with a single arbitrator.

On or about November 2, 2016, Claimant requested a hearing and for three arbitrators to be appointed in this matter. On or about November 11, 2016, Respondents filed a Motion to Serve and Publish the Award and/or Conform the Pleadings to the Evidence ("Motion to Serve Award"). On or about November 16, 2016, Claimant filed an Opposition to Respondents' Motion to Serve Award and requested sanctions against Respondents. On or about December 6, 2016, Respondents' filed a Reply in Support of the Motion to Serve Award and objected to Claimant's request for sanctions.

On or about November 30, 2016, Respondents filed an Answer and Amended Counterclaim. On or about December 1, 2016, Claimant filed an Objection to Respondent's Filing of an Amended Answer and Counterclaim.

On December 21, 2016, the Arbitrator entered the following Order:

- 1) Respondents' Motion to Accept the Amended Answer and Counterclaim is granted.
- 2) Claimant's request for sanctions is denied.
- 3) Claimant is provided 20 days to file a written response to Respondents' Amended Answer and Counterclaim.
- 4) Claimant's request for a hearing is granted.
- 5) The Simplified Arbitration Case seeks damages by the parties for less than \$50,000, and as such will remain with a single arbitrator and the only arbitrator chosen by the parties in this matter, and not a three-arbitrator panel.
- 6) A telephonic hearing will be held with the goal of minimizing additional expenses to all parties.
- 7) The sole issue to be discussed during this hearing pertains to conforming the evidence to the pleadings, which will now include the Original Claim, Amended Answer and Counterclaim, and Response to Counterclaim.
- 8) It is further noted that Claimant failed to file a written response to the originally filed Answer and Counterclaim.
- 9) Parties are to submit three (3) mutually agreed upon hearing dates and times to FINRA, within 20 days of the response date.



- 10) Respondents' Motion to Serve Award is taken under advisement, pending disposition following the telephonic hearing.

### **AWARD**

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

1. Claimant's claims, each and all, are denied in their entirety.
2. Respondents' Counterclaim is denied in its entirety.

Based upon review of all pleadings and documents submitted by both Claimant and Respondents, and after consideration of the arguments presented, the sole public arbitrator is issuing this Explained Decision:

The Arbitrator found that as both parties requested less than \$50,000.00 in damages, the case would remain as a simplified case. No party requested additional discovery following the filing of Respondents' Amended Answer and Counterclaim.

Pursuant to Claimant's request for a hearing, the Arbitrator ordered that a telephonic hearing be held to conform the pleadings to the evidence.

On February 2, 2017, at the start of the recorded telephonic hearing, Jennifer Tarr, the Representative from Cold Spring Advisory Group requested, an in-person hearing. FINRA Case Administrator Patrick Walsh directed Ms. Tarr to the Arbitrator's Order, dated December 21, 2016, indicating the hearing would be telephonic and that this was the opportunity for parties to present witness testimony to support the pleadings. Respondents' counsel, Ms. Judy Newcomb, reported that she was prepared to call two witnesses, if necessary. Neither party called witnesses during the hearing.

#### **Findings and Conclusions on Claimant's Claims and Respondents' Counterclaim**

On January 19, 2012, Claimant, Tom Halling, a highly experienced active investor and successful farmer, opened a new non-discretionary account at Cape Securities with Faccini. At the time, he had four open brokerage accounts at different firms. Prior to opening the account, he told Faccini of his 30+ years of general investment experience, 15 years of stock trading, and experience margin trading. This Account Form shows: previous investment experience, "high" investment objective, "speculative," risk tolerance, "aggressive (high degree of risk/high activity)", and investment time horizon, "short (0-5 years)." The new account was to be funded by "income."

Claimant did not want fixed-income products or a diversified investment account at Cape Securities; he wanted to trade speculative investments. Claimant opened the account in January 2012, added margin privileges in March, stopped adding outside funds in May 2012, ceased trading in December 2012, and closed

the account in March 2013. Claimant engaged in stock purchases, mostly on margin, with twelve companies. These trades were funded by checks, wire transfers, and trades.

#### Claim of Unsuitability

Under the applicable law, Claimant has not met his burden of proving unsuitability because he supplied no legal, or statutory authority or evidence to support qualitative unsuitability or quantitative unsuitability. The credible evidence in the record shows that Faccini made recommendations based on Claimant's age, employment background, financial profile, investment objective (speculative), risk tolerance (aggressive), investment experience (high), and trading experience (30+ years of investment, 15+ years of trading and sophisticated knowledge of margins). Faccini knew this account constituted only a small percentage of Claimant's overall investments. Claimant shared his margin trading experience, indicated his other accounts were currently trading on margin, and disclosed that he was actively trading elsewhere. He expressed awareness of risks posed by this kind of trading, which were also defined in the New Account and Margin applications.

At no time before November 2015, did Halling complain to Respondents of unauthorized, unapproved, or dissatisfied trading activity or strategies or change his investment objective. During the hearing, Claimant relied upon an expert report; however, this report was never provided to FINRA, the arbitrator, or referenced specifically as an Exhibit in the Statement of Claim or any other filed pleading. Thus, this report and any reliance upon it by Claimant will not be considered.

A review of the record shows Claimant knowingly executed and understood all forms. Respondents showed this account was reviewed daily, each position was recommended based on the objective and risk tolerance, and each trade was reviewed on its merit. Claimant's trading pattern was within the parameters of a highly experienced customer seeking a speculative objective in a short-term time horizon, and who expected to take on a high degree of risk. Claimant's trade authorizations were evidenced through outside payments to fund transactions, and receipt of trade confirmations and monthly statements. Based on this record, Claimant, an experienced stock trader and stock speculator, knowingly engaged in this trading and all transactions and activity generated from this account were suitable.

#### Claim of Failure to Supervise

Based on the above facts, evidence, conclusions and applicable law, Claimant failed to meet his burden of proving that Cape Securities failed to supervise this brokerage account and Respondent's Compliance Officer, Lovett failed to supervise the Registered Representative Faccini. Respondents produced the firm's written supervisory procedures, explained how these procedures were followed both with the representative and the account, and demonstrated how the representative acted in good faith in making recommendations. Claimant responds with broad accusations, and no law or statutory authority. Claimant

provided no rational connection between Lovett's attached BrokerCheck® report and this account to demonstrate any failure to supervise.

Claim of Breach of Fiduciary Duty

Claimant failed to submit any common law or statutory authority explaining how Respondents owed Claimant a fiduciary duty. Claimant also failed to produce evidence demonstrating how Respondents breached any fiduciary duty. The unrefuted record shows Claimant to be a knowledgeable, highly experienced and successful investor and entrepreneur, who maintained a non-discretionary brokerage account. Although Claimant received personalized recommendations, he made his own independent investment decisions about when to trade on margin. He received trade confirmations after each transaction and monthly statements. He never complained about trades until years after he closed this account. Based on the circumstances describing the opening of Claimant's account, when coupled with the frequent firm communications between the representative and Claimant, the record shows nothing to establish any misconduct or breach of fiduciary duty.

Claimant requests the Arbitrator make a referral to FINRA Department of Enforcement for further investigation of potential forgery on the new account forms for Halling. After unsuccessfully attempting to resolve this matter with Claimant, Respondents filed a written response supported by statements from a Cape Securities supervisor and copies of the relevant documents directly refuting the allegation. The supervisor explained, consistent with FINRA Rule 4512 and SEC Rule 17a-3(a)17, how Cape Securities initially opens trading accounts without a signed customer contract so long as the firm has certain details, noting neither FINRA nor SEC require a customer to sign a contract to open an account. Next, Cape Securities requires every customer, within two weeks of opening the account, to return a signed application verifying his information and acknowledging the terms and conditions. Then, a supervisor verifies the verbal representations were consistent with the signed document received. Here, Faccini faxed the unsigned initial account application to the firm's home office where the Cape Securities supervisor verified Claimant's identity and opened the account. Next, Faccini sent the customer the application for signature and placed the returned signed application in Claimant's file. The Cape Securities supervisor approved the application after verifying for suitability that the information had not changed. Claimant produced nothing, in the form of evidence or argument, to refute this response or support this serious allegation. Based on careful examination of all submitted materials, Claimant's request for referral to FINRA is denied.

Respondents' contend Claimant's Statement of Claim was not properly signed or executed by a person lawfully representing Halling, a Kansas resident, or by Claimant as established by FINRA Rules because Claimant's non-attorney representative, Cold Spring Advisory Group, is a non-attorney limited liability corporation. Respondents argue that although FINRA Rules permit a party in arbitration to be represented by a non-attorney person, where allowed by law, FINRA Rules do not permit a corporation to represent a party. Respondents assert no pleading was signed by a person on behalf of Halling and at no time

was any request made to cure this defect in the pleadings by a subsequent pleading, document or statement. Respondents raise this issue in every filed pleading and during the hearing. During oral argument, Respondents' counsel also claimed this case was frivolous.

Claimant's representative submitted no written response in a subsequent filed pleading authorizing the representation of Claimant, discussing this signature issue or seeking to withdraw as Claimant's representative. During the telephonic hearing, Ms. Tarr replied that her firm was "a new element in FINRA," and stated, without citing any authority, that a signature was not required.

Claimant's Submission Agreement in the Electronic Signature section states: "By entering your electronic signature below, you are one of the following: (1) the claimant; or (2) a person with legal authority to bind the claimant; or (3) a person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the claimant; or (4) an attorney who has actual or implied written or verbal power of attorney from the claimant to sign on the claimant's belief and thus, bind the claimant to the terms of the Submission Agreement as if the claimant signed the form personally." The Electronic Signature Section of this Submission Agreement identifies Claimant as, "Mr. Tom Halling." The signature section indicates, "/Tom Halling th/." The capacity section, indicates, "Representative."

To initiate an arbitration, FINRA Rules require every claimant properly sign the Submission Agreement and the Statement of Claim. The signatory section denotes Halling is not representing himself. No particular individual in this section is named as his "representative," and no explanation is provided how this representative has the authority to bind Claimant to the terms of this Submission Agreement. In examining the beginning of the on-line Submission Agreement, Claimant's representative is identified as Jennifer Tarr, a non-lawyer employee of a company, not a law firm, which represents customers in FINRA arbitrations. Cold Spring Advisory Group is not a member of FINRA. However, Jennifer Tarr is not specified as Claimant's representative on the Statement of Claim.

FINRA Dispute Resolution operates the largest securities dispute resolution forum in the world. FINRA Dispute Resolution facilitates efficient resolution of monetary, business, and employment disputes among investors, securities firms, and employees of securities firms. FINRA provides the first line of oversight for brokers-dealers and the first line of defense for investors by virtue of its comprehensive oversight program. FINRA Dispute resolution handles intra-industry employment and business disputes and investor/investment disputes involving stocks, bonds, mutual funds, and other types of securities.

FINRA's website provides investors with several options for investors to resolve securities-related disputes. In the section of How to Find an Attorney, FINRA states "You should consider hiring an attorney to represent you during the arbitration or mediation proceedings to provide direction and advice. Even if you do not choose to hire an attorney, brokerage firms are generally represented by



an attorney. If you cannot afford an attorney, some law schools provide legal representation through securities arbitration clinics.” The website goes on to say, The Office of Dispute Resolution staff members cannot provide specific recommendations for finding an attorney or other legal representative, but offers general advice on how to find an attorney who specializes in resolving securities complaints.

Effective December 24, 2007, Rule 12208(c) of the FINRA Code of Arbitration Procedure for Customer Disputes was amended to provide that, “[p]arties to a FINRA arbitration maybe represented by a person who is not an attorney, **unless state law prohibits such representation**, the person is currently suspended or barred from the securities industry in any capacity, or the person is currently suspended from the practice of law or disbarred.” The purpose behind these changes was to simplify the process, provide parties more flexibility and control over the arbitration process and to provide straight-forward procedures and rules for parties to follow. The changes also added a provision requiring every Customer Statement of Claim and pleading be signed by a person.

The FINRA website, in discussing the Rule for possible non-lawyer representation, states one should, “[p]lease be aware that representation by a non-attorney might be considered to be the unauthorized practice of law in some jurisdictions, so please check with the State Bar (or similar organization) for more information.”

Jurisdictions prohibiting non-lawyers from representing parties provide the following reasons supporting their restriction: non-lawyers are not bound by the rules of professional conduct lawyers required by the jurisdiction, professional rules are designed to protect clients from abusive practices of regulated lawyers; representation by non-lawyers may promote frivolous litigation or litigation that should never have been filed.

The Kansas Supreme Court and the Rules of Professional Conduct have consistently and firmly held non-attorney representatives are not authorized to practice law in its jurisdiction and individuals can only be represented by a lawyer, if they are not representing themselves [www.law.cornell.edu/ethics/KS\\_CODE.HTM](http://www.law.cornell.edu/ethics/KS_CODE.HTM). The Kansas Supreme Court recognizes only four categories of individuals who may appear in the courts of the state: (1) members of the bar who have licenses to practice law; (2) individuals who have graduated from an accredited law school and have a temporary permit to practice law; (3) legal interns; and (4) non-lawyers, who may represent only themselves and not others. State ex rel. Stephen v. Adam, 243 Kan. 619, 623, 760 P.2d 683 (1988); see State ex rel. Stephen v. Williams, 246 Kan. 681, 690-691, 793 P.2d 234 (1990). Kansas lawyers are given a special franchise to appear in Kansas Courts because of their education, standards of character and fitness, examination, and standards of ethics and professional conduct. Rules of the Kansas Supreme Court. Rules 226, 706, 707, 709. These distinctions of education and special abilities authorize lawyers to represent and appear for others in Court.

In *State ex rel. Stephen v. Williams*, 246 Kan. 681 (1990), The Supreme Court held while an individual, “may appear in court on his own behalf...he has no franchise or authority to appear for or on behalf of any other person or entity... or to assist any such person or entity in any manner which requires legal knowledge and training.” In 1993, the Board of Tax Appeals requested guidance and received an opinion from the Kansas Attorney General about what conduct by non-lawyers was permitted in cases before The Board of Tax Appeals, advising them, “a non-attorney representative may not engage in the unauthorized practice of law, and therefore may not examine witnesses, file pleadings, make legal arguments, or perform any functions deemed to be the practice of law. Ks. Atty. Gen. Opin. No. 93-100 (July 26, 1993). Thus, under Kansas law, neither non-attorney representative Jennifer Tarr nor Cold Spring Advisory Group is authorized under the law to represent Claimant.

Kansas heavily regulates the unauthorized practice of law to prevent non-lawyers from representing a person in an arbitration to protect public interest and welfare. It specifically prohibits non-lawyers from appearing on behalf of another person, drafting documents affecting the legal rights of another, representing others in binding arbitration proceedings where opening statements are made, documentary evidence and witness testimony is presented, and arguments are made based upon violations of statutes or common law. In this case, these representatives totally disregarded and/or ignored Kansas law and FINRA Rules believing they were exempt because they were “a new element in FINRA.”

Lastly, Claimant did not attempt to cure the signature violation by having Halling personally sign the pleadings or having an authorized person file an appearance and sign all unsigned submissions. Neither Jennifer Tarr nor Cold Spring Advisory Group ever attempted to define the capacity upon which the representation is based or explain the authority in upon which it is authorized to bind the Claimant without a signature on any pleading.

FINRA Rules of Procedure require an individual person, and not a corporation, to sign the Submission Agreement and Statement of Claim to certify they have read the procedures and Rules of FINRA relating to arbitration, and agree to be bound by them. Ms. Tarr refused to sign the pleadings.

Under FINRA Code of Arbitration Procedure, and as limited by Kansas law, the pleadings are stricken, as neither Cold Spring Advisory Group nor non-attorney Jennifer Tarr can represent Claimant in this arbitration, and even if we were to address the merits, Claimant has not met his burden of proof on any count, so all awards are in favor of Respondents.

If the Arbitrator has provided an explanation of her decision in this award, the explanation is for the information of the parties only and is not precedential in nature.

3. Other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.

4. Any and all claims for relief not specifically addressed herein, including punitive damages, attorneys' fees, and expungement, are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$ 600.00
Counterclaim Filing Fee	= \$ 1,700.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Cape Securities Inc. is assessed the following:

Member Surcharge	= \$ 750.00
Member Process Fee	= \$ 1,750.00

#### **Hearing Session Fees and Assessments**

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) hearing session @ \$ 450.00/session	= \$ 450.00
Hearing Date: February 3, 2017 1 session	
<hr/> Total Hearing Session Fees	<hr/> = \$ 450.00

The Arbitrator has assessed \$225.00 of the hearing session fees to Tom Halling.

The Arbitrator has assessed \$225.00 of the hearing session fees jointly and severally to Cape Securities Inc., Lon Charles Faccini, Jr., and Michael Allen Lovett.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATOR**

Lynn Hirschfeld Brahin

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

**Arbitrator's Signature**

/s/ Lynn Hirschfeld Brahin

Lynn Hirschfeld Brahin  
Sole Public Arbitrator

3/1/17

Signature Date

3/1/17

Date of Service (For FINRA Office of Dispute Resolution office use only)

**ARBITRATOR**

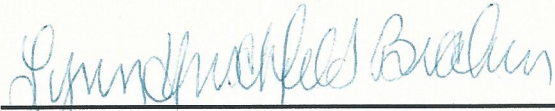
Lynn Hirschfeld Brahin

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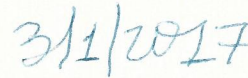
Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

**Arbitrator's Signature**



\_\_\_\_\_  
Lynn Hirschfeld Brahin  
Sole Public Arbitrator



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

\_\_\_\_\_  
Date of Service (For FINRA Office of Dispute Resolution office use only)