AWARD
FINRA DISPUTE RESOLUTION

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.

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.

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.

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.

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. Weiner'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.

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.

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.

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.

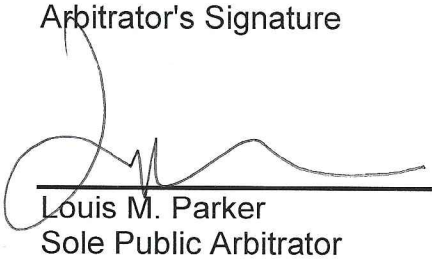
The Arbitrator notes that in the Answer to the Statement of Claim, Respondents Milano, Rago, and Meade requested that this matter be expunged from their records maintained by the CRD. The Arbitrator also notes that Respondents Milano, Rago, and Meade did not request expungement in the Answer to the Amended 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 - 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)