

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

HILTON M. WIENER,

Plaintiff,

-against-

Index No. 602501/17

FRANK MULLIGAN, MARIANNE MULLIGAN,
COLD SPRING ADVISORY GROUP, LLC,
JENNIFER TARR, AEGIS CAPITAL CORP.,
JOHN HITCHINGS and FINANCIAL INDUSTRY
REGULATORY AUTHORITY a/k/a FINRA,

Defendants.

TO THE ABOVE NAMED DEFENDANT(S):

**Frank Mulligan
832 South Heathwood Drive
Marco Island, FL 34145**

**c/o Steven Legum, Esq.
170 Old Country Road
Mineola, NY 11501**

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve notice of appearance, on the Plaintiff's Attorney(s) within **20** days after the service of this summons, exclusive of the day of service (or within **30** days after the service is complete if this summons is not personally delivered to you within the State of New York); Take notice is that the object of this action and the relief sought is set forth below and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded together with the costs and disbursements of this action.

Plaintiff designates Suffolk County as the place of trial. The basis of venue designated is the location of Defendant Cold Spring Advisory Group, LLC's principal place of business.

Dated: New York, New York

April 18, 2017

Hilton M. Wiener, Esq., pro se
3099 NW 28 Terrace
Boca Raton, FL 33434
(561) 750-6672
Hill2020@aol.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

HILTON M. WIENER,

Plaintiff,

-against-

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FRANK MULLIGAN, MARIANNE MULLIGAN,
COLD SPRING ADVISORY GROUP, LLC,
JENNIFER TARR, AEGIS CAPITAL CORP.,
JOHN HITCHINGS and FINANCIAL INDUSTRY
REGULATORY AUTHORITY a/k/a FINRA,

Defendants.

TO THE ABOVE NAMED DEFENDANT(S):

**Marianne Mulligan
832 South Heathwood Drive
Marco Island, FL 34145**

**c/o Steven Legum, Esq.
170 Old Country Road
Mineola, NY 11501**

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve notice of appearance, on the Plaintiff's Attorney(s) within **20** days after the service of this summons, exclusive of the day of service (or within **30** days after the service is complete if this summons is not personally delivered to you within the State of New York); Take notice is that the object of this action and the relief sought is set forth below and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded together with the costs and disbursements of this action.

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JENNIFER TARR, AEGIS CAPITAL CORP.,
JOHN HITCHINGS and FINANCIAL INDUSTRY
REGULATORY AUTHORITY a/k/a FINRA,

Defendants.

TO THE ABOVE NAMED DEFENDANT(S):

**Cold Spring Advisory Group, LLC, a Nevada company
445 Park Avenue, 9th Floor
New York, NY 10022**

by serving a member of the limited liability company in this state, any manager of the limited liability company, any agent authorized to receive process, or any other person designated by the limited liability company to receive process as if such person was a Defendant.

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COLD SPRING ADVISORY GROUP, LLC,
JENNIFER TARR, AEGIS CAPITAL CORP.,
JOHN HITCHINGS and FINANCIAL INDUSTRY
REGULATORY AUTHORITY a/k/a FINRA,

Defendants.

TO THE ABOVE NAMED DEFENDANT(S):

**Aegis Capital Corp.
810 7th Avenue, 18th Floor
New York, NY 10019**

**c/o Sameer Rastogi, Esq.
61 Broadway, 32nd Floor
New York, NY 10006**

**by serving an officer, director, general agent, cashier or assistant cashier of the corporation
or, or any other person designated by corporation.**

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve notice of appearance, on the Plaintiff's Attorney(s) within **20** days after the service of this summons, exclusive of the day of service (or within **30** days after the service is complete if this summons is not personally delivered to you within the State of New York); Take notice is that the object of this action and the relief sought is set forth below and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded together with the costs and disbursements of this action.

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JENNIFER TARR, AEGIS CAPITAL CORP.,
JOHN HITCHINGS and FINANCIAL INDUSTRY
REGULATORY AUTHORITY a/k/a FINRA,

Defendants.

COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF

Plaintiff Hilton M. Wiener, Esq., pro se, sues Defendants Frank Mulligan, Marianne Mulligan, and Cold Spring Advisory Group, LLC, a Nevada limited liability company, for damages and equitable relief and states the following:

1. This is an action for damages that exceed \$25,000.00 and for equitable relief.
2. Plaintiff is over 18, sui juris and an attorney licensed to practice law in the State of New York.
3. Defendants Frank Mulligan and Marianne Mulligan (collectively "Mulligans"), are over 18 and sui juris.
4. Defendant Cold Spring Advisory Group, LLC is a Nevada limited liability company ("Cold Spring") with its principal office located in Suffolk County.
5. The causes of action arose in the State of New York. Furthermore, the Legal Services Agreement executed by the Plaintiff and the Mulligans parties subjects the Mulligans to the jurisdiction of the State of New York.

6. Venue lies in the County of Suffolk where Cold Spring maintains an office.

7. All conditions precedent have occurred, been excused or waived.

8. The Mulligans are retired and reside in Naples, Florida. Mr. Mulligan is a sophisticated businessman and a high net worth individual. Prior to his retirement, Mr. Mulligan owned a funeral home in New Jersey along with several parcels of real estate. Mrs. Mulligan was employed as a school teacher.

9. At one time, the Mulligans maintained brokerage accounts with the New York offices of National Securities Corporation and Aegis Capital Corp. During the period of time that the Mulligans maintained their accounts at these two broker-dealer firms, their accounts suffered combined net out of pocket losses that exceeded \$441,000.00 with commissions alone totaling more than \$114,000.00.

10. Brokerage firms, as well as their management, compliance and broker personnel, are regulated by the Financial Regulatory Authority ("FINRA"). FINRA is the regulatory body for all securities firms located in the United States and those from abroad who transact business/maintain offices in the United States. FINRA's mission is to provide investor protection and promote market integrity.

11. As such, FINRA promulgates policies and procedures for accomplishing its mission. FINRA administers an arbitration procedure for dispute resolution between a customer and his/her broker-dealer. FINRA is authorized to investigate and impose sanctions that can take many forms against member firms and associated persons who engage in conduct that violate Federal and state securities laws as well as SEC/FINRA rules and regulation.

12. FINRA maintains a dispute resolution program that provides recourse to its customers who have a dispute with a member firm or persons associated with that firm related to

the management of the customer's account(s) and/or the conduct of the securities firm, broker or any other person associated with the firm.

13. Customers who believe that they have such a dispute and are entitled to monetary relief may engage in the FINRA Office of Dispute Resolution arbitration process whereby the customer may file a claim, pay a filing fee and ultimately appear at a hearing where a panel of arbitrators considers the evidence and then issues an award in favor of a party/parties to the arbitration proceedings.

14. Cold Spring is owned and managed by Louis Ottimo, a former executive with EKN Financial Services, Inc. EKN was a FINRA member broker-dealer firm that was expelled in 2015 for violating Federal and state laws governing the securities industry as well as rules and regulations promulgated by FINRA and the United States Securities Exchange Commission ("SEC"). The expulsion was imposed after a series of lesser sanctions had been imposed upon EKN for numerous violations of the types cited herein. Mr. Ottimo was also expelled from the securities industry by FINRA, having been the subject and target of numerous complaints and regulatory actions brought by customers who he had harmed and various state and Federal administrative agencies responsible for oversight of broker-dealer firms and their employees.

15. Ironically, once having been booted from FINRA, Mr. Ottimo formed Defendant Cold Spring for the purposes of promoting the company as a stock loss recovery firm. Specifically, it engages in telemarketing practices that target individuals from around the world who have at one time or another maintained an account or accounts with FINRA member broker-dealer firms located in the United States.

16. Cold Spring's pitch to the leads that it cold calls offers relief in the form of loss recovery through the FINRA arbitration process. Cold Spring first requires that its clients pay a

substantial amount of money for what it describes as a forensic evaluation of the accounts that suffered the alleged losses. Towards that end, Cold Spring employs an outside forensics firm which reviews the account statements and trade confirmations, and performs a series of mathematical calculations that support various theories of redress against the broker-dealer firms.

17. By way of example, Cold Spring's forensics expert will evaluate the accounts to determine if the accounts were churned by the brokers, excessive commissions charged or if the customer was placed in unsuitable investments or trading strategies. The net out of pocket losses along with various other metrics are computed with a report then generated for the disgruntled customer/Cold Spring client.

18. Typically, Cold Spring charges anywhere from \$10-25,000.00 for the forensics evaluation. The client is then told that he/she was the victim of misconduct and that their claims against the broker-dealer firm, its brokers and other associated persons have merit and should be pursued through the FINRA arbitration process.

19. One of the services Cold Spring also offers its clients is a referral to an attorney for the purpose of representing the client in a FINRA arbitration proceeding on a contingency basis and at no additional cost to the client.

20. Plaintiff is one of the attorneys who received referrals from Cold Spring to represent its clients in FINRA arbitration proceedings on a contingency basis and at no additional cost to the client.

21. In early 2015 Plaintiff was retained by the Defendants to file a claim and represent them in that certain FINRA Arbitration Case No. 15-02835.

22. On June 5, 2015 the Mulligans and Plaintiff entered into a Legal Services Agreement ("Agreement"), a copy of which is attached hereto as Exhibit A.

23. The Agreement states that Plaintiff would represent the Defendants on a contingency basis. Paragraph 6 of the Legal Services Agreements obligated the Defendants to pay Plaintiff 30% of any money recovered from the Respondent parties in the above referenced arbitration proceedings. Alternatively, in the event Defendant terminated the attorney-client relationship prior to the conclusion of the arbitration, Defendant agreed to compensate the Plaintiff for services rendered on his behalf at the rate of \$400/hr.

24. From the commencement of Plaintiff's engagement by the Defendant through December 2016 Plaintiff provided the legal services contemplated under the Legal Services Agreement. The Plaintiff reviewed all relevant documents, filed the Statement of Claim, conducted and engaged in the discovery process and positioned the matter for either mediation or final hearing. Moreover, Plaintiff settled with one of the broker-dealer firms named in the Statement of Claim (National Securities Corporation) from whom the Mulligans received settlement proceeds.

25. At the direction of the Mulligans, Plaintiff engaged in settlement negotiations with the remaining broker-dealer firm to the FINRA arbitration, Aegis Capital Corp. Plaintiff and counsel for Aegis, Sam Rastogi, ultimately agreed to mediate the dispute whereby both parties entered into a mediation agreement with Howard Eilen as mediator. The parties set the mediation conference for January 31, 2017 at the FINRA office in Boca Raton, FL.

26. On December 12, 2016 Plaintiff informed the Mulligans that the mediation conference was confirmed for January 31, 2017. In fact, the services of Howard Eilen had been reserved and the pre-mediation case summary and other registration papers required by the mediator had already been completed.

27. Within hours of receiving the news that the mediation conference was scheduled for January 31, 2017, the Mulligans sent an email to the Plaintiff terminating their business relationship. A copy of the email is attached hereto as Exhibit B.

28. Mulligans' email was a complete lie. The Mulligans complained in the email that the mediation conference was being held in January 2017 rather than November 2016 as they allege was promised by the Plaintiff. No such promise was ever made. The mediation date was chosen after Plaintiff coordinated schedules with all of the parties, i.e, Aegis' counsel, his client, Aegis, and, of course, the mediator.

29. What Plaintiff believes actually occurred is the following. Sometime around the end of 2016 (the exact dates of which will be revealed through discovery), Louis Ottimo and Cold Spring contacted the Mulligans directly (among several of Plaintiff's clients) and began to attack the Plaintiff's business practices, impugn his reputation and slander his name through emails and in telephone conversations. This was done with the specific intention of taking over the case so that Ottimo and Cold Spring could obtain the contingency fee in addition to their up-front fee.

30. Upon information and belief, Mr. Ottimo and Cold Spring then convinced the Mulligans to terminate their Legal Services Agreement with the Plaintiff but only after they received confirmation from Plaintiff that the mediation conference had been confirmed for January 31, 2017. Mr. Ottimo and his associate, Jennifer Tarr, in fact attended the mediation with the Mulligans which had been scheduled by Plaintiff and opposing counsel at the FINRA office in Florida.

31. Together, the Mulligans, Louis Ottimo and Cold Spring conspired to deny Plaintiff of the opportunity to earn a fee at mediation and, in his place, allow Louis Ottimo and Cold Spring to represent the Mulligans at the mediation conference.

32. Plaintiff attempted to contact the Mulligans but they refused to return Plaintiff's emails or telephone calls. Accordingly, on December 30, 2016 pursuant to Paragraph 6 of the Legal Services Agreement executed in 2015 by the Mulligans, Plaintiff sent the Mulligans an invoice for services rendered through the termination date in the amount of \$26,410.00. A copy of the invoice is attached hereto as Exhibit C.

33. To date, the Mulligans have not disputed the December 30th invoice received from the Plaintiff.

34. In anticipation of a possible settlement being reached at the January 31, 2017 mediation conference that he had previously arranged with opposing counsel, on January 12, 2017 Plaintiff put all remaining parties to the FINRA arbitration proceedings on notice of his intent to assert a Charging Lien against the settlement proceeds or a subsequent award received at final hearing. A copy of the January 12, 2017 Notice of Charging Lien is attached hereto as Exhibit D.

35. The mediation conference was conducted as scheduled on January 31, 2017 with the Mulligans represented by Mr. Ottimo and Ms. Tarr of Cold Spring, neither of whom are attorneys. In attendance at the mediation was Mr. Mulligan, Louis Ottimo, Jennifer Tarr, mediator Howard Eilen and counsel for Aegis Capital Corp. and his client. Upon information and belief, Mr. Ottimo acted as legal counsel to the Mulligans at the mediation conference. A settlement was reached that exceeded \$26,410.00. However, the exact sum and other terms and

conditions of the settlement have not been disclosed to the Plaintiff due to a confidentiality provision contained in the Confidential Settlement Agreement.

36. Section 475 of the New York State Judiciary Law states in pertinent part

“From the commencement of an action, special or other proceeding in any court or before any state, municipal or federal department, except a department of labor, or the service of an answer containing a counterclaim, or the initiation of any means of alternative dispute resolution including, but not limited to, mediation or arbitration, or the provision of services in a settlement negotiation at any stage of the dispute, the attorney who appears for a party has a lien upon his or her client's cause of action, claim or counterclaim, which attaches to a verdict, report, determination, decision, award, settlement, judgment or final order in his or her client's favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. “

37. Plaintiff was informed by Aegis Capital Corp.’s counsel, Sameer Rastogi, Esq., that a settlement had in fact been reached at the mediation. Plaintiff thereupon demanded that the sum of \$26,410.00 be held in escrow pending the resolution of the Charging Lien issue.

38. It is entirely possible that had Plaintiff been acting as attorney of record for the Mulligans a settlement amount in excess of that agreed upon at the mediation conference could have been negotiated. This greater amount would have lead not only to a larger recovery for the Mulligans but to Plaintiff receiving a larger fee.

39. As a result of Defendant’s failure to either allocate a portion of the settlement proceeds to the Plaintiff or pay the invoice Plaintiff has been damaged in the amount of \$26,410.00 or 30% of the settled amount, whichever is greater, and which is directly related to his representation of the Mulligans.

**Count I- IMPOSITION OF A CHARGING LIEN
(as to all Defendants)**

Plaintiff re-alleges Paragraphs 1-39 and incorporates same herein.

40. Plaintiff and the Mulligans entered into a Legal Services Agreement in which Plaintiff agreed to provide legal services to the Defendants related to a FINRA arbitration proceeding.

41. In consideration for the provision of legal services, Defendants agreed to pay Plaintiff 30% of any money recovered from the parties named as Respondents in the arbitration proceeding. As well, the Legal Services Agreement provides for the Plaintiff to be paid for the services already provided at the rate of \$400/hr in the event that the Defendants should elect to terminate the Legal Services Agreement.

42. On or about December 12, 2016 the Mulligans terminated the Legal Services Agreement without cause. The termination was done completely in bad faith as it came practically on the eve of the mediation conference that the Mulligans agreed to attend (and which they did in fact attend). In response, on December 30, 2016, Plaintiff presented the Mulligans with an invoice for services rendered on their behalf through the date of termination. The invoiced amount was \$26,410.00.

43. To date, the Mulligans have not disputed the December 30, 2016 invoice.

44. In the meantime, the Defendants attended the January 31, 2017 mediation conference arranged by Plaintiff (with Louis Ottimo and Cold Spring in tow) and reached a settlement of the FINRA arbitration. The settlement terms are unknown to the Plaintiff except that the Mulligans agreed to accept a sum of at least \$26,410.00 (the amount of Plaintiff's invoice).

45. Despite having settled the FINRA arbitration, the Mulligans have refused to either pay Plaintiff 30% of the settled amount or the \$26,410.00 invoiced amount.

46. Section 475 of the New York State Judiciary Law states in pertinent part

“From the commencement of an action, special or other proceeding in any court or before any state, municipal or federal department, except a department of labor, or the service of an answer containing a counterclaim, or the initiation of any means of alternative dispute resolution including, but not limited to, mediation or arbitration, or the provision of services in a settlement negotiation at any stage of the dispute, the attorney who appears for a party has a lien upon his or her client's cause of action, claim or counterclaim, which attaches to a verdict, report, determination, decision, award, settlement, judgment or final order in his or her client's favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. “

47. Based on the foregoing, Plaintiff is entitled to a lien upon the settlement proceeds that the Mulligans are to receive from the January 31, 2017 mediation conference.

48. Plaintiff requests that this Court enter an Order affirming Plaintiff's lien upon the settlement proceeds, finding the amount of the lien to be reasonable and directing payment of either 30% of the settlement proceeds or \$26,410.00, whichever amount is greater.

WHEREFORE, Plaintiff demands judgment against Defendants that asserts Plaintiff's right to a charging lien, determines the amount of the lien, for damages in an amount to be determined, prejudgment interest, the costs of this action and any other relief the Court may deem appropriate.

**Count II- BREACH OF CONTRACT
(as to the Mulligan Defendants)**

Plaintiff re-alleges Paragraphs 1-39 and incorporates same herein.

49. The parties entered into a Legal Services Agreement under which Plaintiff agreed to provide legal services to the Mulligans related to the subject FINRA arbitration proceeding described hereinabove.

50. In consideration for the provision of legal services, Defendants agreed to pay 30% of any money recovered from the party respondents in the respective arbitration proceedings. As well, in the event that Defendants elected to terminate the Legal Services Agreement, the

Agreement provided for the Defendants to pay the Plaintiff the value of the services provided at the rate of \$400/hr.

51. One month after unilaterally terminating the Legal services Agreement, Defendants settled their FINRA arbitration proceeding at the mediation conference arranged by the Plaintiff. However, Defendants failed to pay Plaintiff 30% of the settlement proceeds on the December 30, 2017 invoice of \$26,410.00.

52. Defendants breached the Legal Services Agreement by failing to pay Plaintiff under the terms and conditions of the Agreement.

53. As a direct and proximate cause of Defendants' breach, Plaintiff has suffered damages in of at least \$26,410.00 which represents the settled amount with the actual damages perhaps even higher depending on the settled amount, which at the present, is confidential.

WHEREFORE, Plaintiff demands judgment against Defendants for damages in an amount to be determined, prejudgment interest, the costs of this action and any other relief the Court may deem appropriate.

**Count III- UNJUST ENRICHMENT
(as to the Mulligan Defendants)**

Plaintiff re-alleges Paragraphs 1-39 and incorporates same herein.

54. During the time that Plaintiff was providing the Mulligans with legal services Defendants knew that Plaintiff was conferring these benefits upon them in full expectation of receiving payment from the Defendants in one form or another. Specifically, given Plaintiff's track record of obtaining favorable settlements with Aegis Capital Corp. in other arbitration proceedings there was clearly an expectation that the matter would be settled at mediation.

55. By doing so, the Defendants acquiesced to and accepted Plaintiff's performance, thereby creating a contract implied in law and an obligation to pay for the legal services provided.

56. Defendants gained the benefit of Plaintiff's performance. Defendants' acceptance and retention of the benefits bestowed upon them by Plaintiff's performance under the circumstances described herein make it inequitable for Defendants to retain these benefits. Defendants accepted the value of the benefits conferred upon them by Plaintiff, but refused to reimburse or make any repayment whatsoever to Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendants for damages in an amount to be determined, prejudgment interest, the costs of this action and any other relief the Court may deem appropriate.

**Count IV- ACCOUNT STATED
(as to the Mulligan Defendants)**

Plaintiff re-alleges Paragraphs 1-39 and incorporates same herein.

57. Before the institution of this action, Plaintiff provided legal services to the Defendants for more than one year which were accepted by Defendants. The provision of these services resulted in the agreed upon resulting balance.

58. Plaintiff rendered a statement of Defendants' account to Defendants to which Defendants did not object.

59. Depending on the amount of the settlement, Defendants owe Plaintiff \$26,410.00 or 30% of the settled amount, whichever is greater, plus interest for services sold and delivered as noted on the attached invoice marked as Exhibit B.

WHEREFORE, Plaintiff demands judgment against Defendants for damages in an amount to be determined, prejudgment interest, the costs of this action and any other relief the Court may deem appropriate.

**Count V- TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP
(as to all Defendants)**

Plaintiff re-alleges Paragraphs 1-39 and incorporates same herein.

60. Plaintiff enjoyed a business relationship with the Mulligans that began in 2015 and continued through the date that the Mulligans allegedly terminated the relationship.

61. Defendant Cold Spring was well aware of the existence of this relationship. Louis Ottimo is a co-owner of Cold Spring along with his wife, Michelle Ottimo, and the person responsible for referring the cases to attorneys who would then prosecute the FINRA claims.

62. Cold Spring holds itself out as a stock loss recovery firm. Specifically, it engages in telemarketing practices that target individuals from around the world who have at one time or another maintained an account or accounts with FINRA member broker-dealer firms located in the United States.

63. Cold Spring's pitch to the leads that it cold calls offers relief in the form of loss recovery through the FINRA arbitration process. Cold Spring first requires that its clients pay it a substantial amount of money for what it describes as a forensic evaluation of the accounts that suffered the alleged losses. Towards that end, Cold Spring employs an outside forensics firm which reviews the account statements and trade confirmations, and performs a series of mathematical calculations that support various theories of redress against the broker-dealer firms.

64. Once a determination has been made that some form of wrongdoing took place, Cold Spring then refers the case to attorneys such as Plaintiff in order to pursue a claim for damages through the FINRA dispute resolution process.

65. As such, Cold Spring, through Louis Ottimo, referred the Mulligan case to the Plaintiff who then diligently pursued a FINRA claim on their behalf.

66. Louis Ottimo and Cold Spring intentionally and willfully made a decision to take over cases it referred to counsel in order for them to receive additional compensation, i.e., the contingency fee in addition to the up-front consulting fee.

67. Members of Cold Spring and Mr. Ottimo contacted the Mulligans and began to bad mouth the legal services that Plaintiff had provided to the Mulligans and other clients that Cold Spring had referred to Plaintiff for the purpose of taking over the FINRA arbitration proceedings for their own benefit.

68. Until Cold Spring set on undertaking a concerted effort to discredit the Plaintiff the Mulligans had been satisfied with the services provided and results obtained by the Plaintiff on their behalf. Ottimo and Cold Spring made blatantly false and misleading statement designed to wrongfully lure the Mulligans away from the Plaintiff.

69. The Mulligans decided to join in the conspiracy to discredit the Plaintiff by terminating the relationship without any intention to pay the Plaintiff for the legal services he had provided on their behalf.

70. The acts of Cold Spring and the Mulligans were intentional, willful and deliberate acts designed to purposely interfere with Plaintiff's business relationship with the Mulligans.

71. As a direct and proximate result of Cold Spring and the Mulligans' conspiratorial conduct Plaintiff's engagement was terminated and he suffered economic damages in an amount to be determined.

72. The Defendants' conduct in interfering with Plaintiff's business relationship was intentional, willful and designed to cause economic and reputational damage to the Plaintiff.

73. The Defendants' conduct was done with actual malice and ill will towards the Plaintiff with the improper purpose of causing damage to the Plaintiff. There is no justifiable reason for the Defendants' conduct. As such, punitive damages should also be awarded.

WHEREFORE, Plaintiff demands judgment against Defendants jointly and severally for damages in an amount to be determined, prejudgment interest, the costs of this action and any other relief the Court may deem appropriate, including an award of punitive damages.

**Count VI- INJUNCTIVE RELIEF
(as to all Defendants)**

Plaintiff re-alleges Paragraphs 1-39 and incorporates same herein.

74. This is an action for injunctive relief.

75. Under Section 475 of the New York State Judiciary Law, Plaintiff has asserted (and is entitled to) a Charging Lien against the proceeds that the Mulligans are to receive under the terms and conditions of the Confidential Settlement Agreement that was reached at the January 31, 2017 mediation conference.

76. Defendants threaten or are about to do an act in violation of Plaintiff's rights respecting the subject matter of this action that would essentially render the judgment entered in this action ineffectual.

77. Unless restrained by the Court, the acts of the Mulligans will result in the settlement proceeds being disbursed without regard to Plaintiff's Charging Lien and his right under the law to be paid for services rendered under a contingency fee agreement.

78. As well, Plaintiff believes that Defendants may continue to tortuously interfere with Plaintiff's relationships with other clients that were referred to the Plaintiff by Cold Spring.

79. Plaintiff in this action is demanding a judgment restraining Cold Spring from the commission or continuance of certain acts which if allowed or continued during the pendency of this action and thereafter will produce injury to the Plaintiff.

80. Cold Spring is engaged in similar conduct related to seven (7) other cases where it has also interfered with business relationships between Plaintiff and his clients and that involve the disbursement of funds derived from settlements or payment of awards. Moreover, Cold Spring continues to this day to contact Plaintiff's clients for the sole purpose of ruining Plaintiff's attorney-client relationships for its own benefit.

81. Plaintiff has already lost profits and goodwill and will continue to have his reputation damaged if these acts of the Defendants are allowed to continue. Moreover, the Mulligans' ability to disburse the settlement proceeds in their entirety would be inequitable and cause significant damage to the Plaintiff.

82. Plaintiff has no adequate remedy at law because the amount of damages is impossible to determine, and of a character that cannot be remedied by monetary compensation.

WHEREFORE, Plaintiff requests that injunctive relief, temporary and permanent, restraining and enjoining the Defendants from disbursing the settlement proceeds and interfering with Plaintiff's business relationships and any other relief the Court may deem appropriate.

Dated this April 18, 2017

/s/ Hilton M. Wiener, pro se

Hilton M. Wiener, Esq.
244 Fifth Avenue, Suite A-176
New York, NY 10001
(561) 750-6672
hilton@hiltonwienerlaw.com

Exhibit A

LAW OFFICE OF HILTON M. WIENER, ESQ.

244 Fifth Avenue, Suite A-176, New York, N.Y. 10001

Telephone: 561-750-6672 Facsimile: 561-892-0314

hilton@hiltonwienerlaw.com**Florida address:**

3099 NW 28th Terrace

Boca Raton, FL 33434

June 3, 2015

VIA EMAIL: fxmulligan@msn.com

Frank and Marianne Mulligan
832 S. Heatherwood Drive
Marco Island, FL 34145

Re: Legal Services Agreement for Securities Claims/Stock Losses

Dear Mr. Mulligan:

We are pleased that we have been retained by you (the "Client"), in connection with the above referenced matter. In addition, this letter will govern all other legal work (and related costs) accomplished by the Firm for the Client, unless a different fee and cost arrangement for such work is agreed upon in writing by the parties. This letter describe the basis on which our Firm will provide legal services to the Client and bill for those services (the "Agreement").

1. The Client hereby authorizes the Firm to do and to perform all acts on the Client's part which are necessary and appropriate to this representation. You have a choice of utilizing any attorney to represent you in this matter (if you wish to be represented by counsel) and that by selecting this Firm you are doing so voluntarily.

2. **Attorneys' Fees:** Although the Client has been advised of the right to retain the law firm under an arrangement whereby the Firm would be compensated on the basis of the reasonable value of services rendered or on an hourly rate, the Client and the Firm agree that the Firm shall be paid one-third of the sum recovered, whether by suit, settlement or otherwise.

3. **Disbursements:** In the event there is no recovery, the client shall not be obligated to pay the Firm a legal fee or disbursements. Disbursements may include some of the following expenses: court stenographer fees, deposition costs, travel expenses, expert fees for expert depositions and court appearances and trial exhibits. Computer on-line search fees, express mail, postage, photocopy charges, long distance telephone charges among other charges will be billed at a total one time flat rate of \$250. At the time of the final settlement, these expenses and disbursements shall be deducted prior to the

LAW OFFICE OF HILTON M. WIENER, ESQ.
244 Fifth Avenue, Suite A-176, New York, N.Y. 10001
Telephone: 561-750-6672 Facsimile: 561-892-0314

computation of the Attorney's Fee. If Client substitutes another lawyer or law firm, the Client will be responsible for all disbursements and the hourly legal fee of the Firm for all time incurred at the regular billing rate of \$400 per hour, regardless of recovery.

4. **Computation Of Fees:** The above contingency fee shall be computed on the net recovery arrived at by deducting from the gross recovery all appropriate disbursements in connection with the institution and prosecution of this claim as set forth in paragraph 3 above. We are not affiliated with any outside organization, consultant, expert or brokerage firm and any fees or expenses Client pays or has paid directly to outside consultants, experts or the like are not included herein nor are those expenses taken into consideration with respect to the fee this Firm shall earn.

5. **Tax Advice:** The Client understands that the Firm will not provide any advice regarding the tax consequences of accepting money from a settlement or award. CLIENT SHOULD CONTACT A TAX PROFESSIONAL REGARDING ANY TAX CONCERNS REGARDING ANY SETTLEMENT PRIOR TO THE SETTLEMENT.

6. **Right to Withdraw:** The Firm expressly reserves the right to withdraw its representation at any time upon reasonable notification to the Client. In the event that the Client advises the Firm to discontinue the handling of this claim, or if the Client fails to cooperate with the Firm in the handling of this claim, Client agrees to compensate the Firm a reasonable amount for its services, and for the time spent on this claim on an hourly basis or under such other arrangement that may be agreed upon by the parties. The Client understands that the Firm has conditionally accepted this case based upon independent confirmation of all facts and injuries claimed to be sustained by Client. In the event that the Client tries to transfer the file from this office, the Client shall be responsible to compensate the Firm for the reasonable value of their services. Such transfer shall not include documents or attorney work product regarding the general liability of the defendants.

7. **Appeal:** The above contingency fee does not contemplate any appeal. The law firm is under no duty to perfect or prosecute such appeal until a satisfactory fee arrangement is made in writing regarding costs and counsel fees.

8. **Statute of Limitations:** The Client understands that the Statute of Limitations period for this case must be investigated and that this Agreement is made subject to that investigation as well as an investigation of the entire case. Client understands that the statute of limitation is subjective in FINRA arbitrations and also understands that the claim could be denied by the Arbitration panel based upon the FINRA Rules of Eligibility. Although Client understands that the claim could potentially be time barred, Client agrees to proceed with the claim and not hold the Firm liable if the claim is determined to be time barred by the Arbitration panel.

9. **No Representations:** No attorney can accurately predict the outcome of any legal matter; accordingly, no representations or promises are made either expressly or impliedly as to the final outcome of this matter. Client agrees to immediately report any changes in his residence, telephone number or health to the Firm.

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10. **Approval Necessary For Settlement:** Attorneys are hereby granted a power of attorney so that they may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations, and papers as shall be reasonably necessary to conclude this representation including settlement and/or reducing to possession any and all monies or other things of value due to the Client under his claim as fully as the Client could do so in person. Attorneys are also authorized and empowered to act as Client's negotiator in any and all negotiations concerning the subject of this Agreement.

11. **Association Of Other Attorneys:** The Firm may, at its own expense, use or associate with other attorneys in the representation of the aforesaid claims of the Client. Client understands that the Firm employs a number of attorneys. Several of those attorneys may work on Client's case. The Firm may participate in the division of fees in this case and assume joint responsibility for the representation of the Client either in the event that the Attorney retains associate counsel or that the client later chooses new counsel, provided that the total fee to the Client does not increase as a result of the division of fees and that the attorneys involved have agreed to the division of fees and assumption of joint responsibility.

12. **New York Law To Apply:** This Agreement shall be considered construed under and in accordance with the laws of the State of New York and the rights, duties and obligations of Client and the Firm regarding the Firm's representation of Client and regarding anything covered by this Agreement shall be governed by the laws of the State of New York.

13. **Arbitration:** Any and all disputes, controversies, claims or demands arising out of or relating to (1) this Agreement or (2) any provision hereof or (3) the providing of services by the Firm to Client or (4) the relationship between the Firm and Client, whether in contract, tort or otherwise, at law or in equity, for damages or any other relief, shall be resolved by binding arbitration pursuant to the Federal Arbitration Act in accordance with the Commercial Arbitration Rules then in effect with the American Arbitration Association. Client shall not file a class action against the Firm or seek to assert any claims or demands against the Firm by or through a class action, either as the named plaintiff or as a member of the class, but rather shall submit his/her claims or demands to binding arbitration pursuant to the provisions of this Paragraph. Any such arbitration proceeding shall be conducted in New York County, New York. This arbitration provision shall be enforceable in either federal or state court in New York pursuant to the substantive federal laws established by the Federal Arbitration Act. Any party to any award rendered in such arbitration proceeding may seek a judgment upon the award and any Supreme Court in New York having jurisdiction may enter that judgment. In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to recovery of its reasonable attorney fees and costs incurred in such suit or proceeding or in any appeal thereof.

14. **Parties Bound:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal

representative, successors and assigns.

15. **Severability:** If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of the Agreement, or the application of such term, covenant or condition to other persons or circumstances, shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. **Execution:** The parties agree that the Agreement may be executed in counterparts and delivered by means of legible facsimile and that any facsimile signature shall be effective and binding on the parties so signing. This Agreement constitutes the sole and only Agreement of the parties hereto and supersedes any prior understandings or written or oral agreement between the parties respecting the within subject matter.

This letter constitutes the arrangement upon which we have agreed to undertake representation of the legal matters described herein. Please review the foregoing. If the arrangement described in this letter is not acceptable to you in all respects, please telephone or write me. If it meets with your approval, kindly sign this Agreement where indicated and return it to us at which time this letter will constitute the arrangement between you and the Firm with respect to the matters set forth herein. Thank you for retaining us and we look forward to working with you.

Sincerely yours,

LAW OFFICE OF HILTON M. WIENER, ESQ.

/s/ Hilton Wiener

Hilton M. Wiener, Esq.

APPROVED AND AGREED TO this 5TH day of June, 2015 by the undersigned.

CLIENT:

By: Frank X. Mulligan, Jr.

Print Name: FRANK X. MULLIGAN, JR.

Email: FXMULLIGAN@MSA.COM

Phone: cell 973-715-4918
Home 239 393-2229

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Exhibit B

hilton wiener

From: Frank X Mulligan Jr. <fxmulligan@msn.com>
Sent: Monday, December 12, 2016 4:27 PM
To: hilton wiener
Cc: sam ballen
Subject: Re: FINRA securities arbitration

Dear Hilton,

My wife Marianne and I have decided that we do not want you to represent us any longer in this case with Aegis Capital. We were told a settlement conference was going to be held at the end of Nov. 2016. Now it's End of Jan. 2017. We've waited way too long to go to Arbitration, and this is just mediation!

Please respect our decision in this matter as is it final. Frank & Marianne Mulligan

Sent from my iPad

On Dec 12, 2016, at 12:33 PM, hilton wiener <hilton@hiltonwienerlaw.com> wrote:

Dear Frank:

We have scheduled a mediation of your securities case on January 31, 2017 in the Boca Raton office of FINRA. The mediation is non-binding so we can always go to the hearing if we reach an impasse, which is unlikely. We will need to review the case before that time. I look forward to finally getting this resolved. Feel free to give me a call if any questions.

Hilton

Law Office of Hilton M. Wiener

244 Fifth Avenue
Suite A-176
New York, N.Y. 10001
Phone: 561.750.6672
Fax: 561.892.0314
Email: Hilton@hiltonwienerlaw.com
Web site: www.securityfraudattorney.com
www.linkedin.com/in/hiltonwiener

Florida address:

3099 NW 28th Terrace
Boca Raton, FL 33434

Confidentiality Statement: The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any transmission of confidential and/or privileged material to persons or entities other than intended recipients shall not be construed as a waiver of such privileges or confidence. Any review, retransmission, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited. Any action taken in reliance of this information by any persons or entities who are not intended recipients is also prohibited. If you receive this in error, please contact the sender of the email and delete the material from any computer or electronic device.

Exhibit C

LAW OFFICE OF HILTON M. WIENER

244 Fifth Avenue, Suite A-176 • New York, NY 10001
 Tel: (561) 750.6672 • email: hilton@hiltonwienerlaw.com

Frank and Marianne Mulligan
 832 South Heathwood Drive
 Marco Island, FL 34145

Bill date: December 30, 2016
 Bill Period: July 1, 2015-December 12, 2016
 Payment due upon receipt

Re: FINRA Arbitration Case No. 15-03220

STATEMENTFor Professional Services Rendered

Date	Description	Hrs.
6/29/15	Review file; analyze case and research issue of successor liability given that more than one firm is a party; prepare demand letter to National and Aegis.	4.5
10/5/15	Prepare Statement of Claim and all exhibits.	15.0
10/28/15	Register on portal	0.3
11/5/15	Prepare FINRA letter re: request for expedited proceeding.	1.0
12/1/15	Email opposing counsel	0.2
12/7/15	Review and evaluate received position	0.5
12/10/15	Email from OC	0.2
12/14/15	Email from finra	0.2
12/15/15	Emails from OC	0.3
12/15/15	Review response granting expedited proceeding.	0.3
12/16/15	Email OC re settlement	0.2
12/29/15	Email OC re extension	0.2
12/31/15	Review Statement of Answer and exhibits filed by National.	1.5
12/31/15	Review email from finra, review motion to sever	0.8
1/8/16	Review Statement of Answer and Exhibits filed by Aegis.	2.0
1/11/16	Corresp with finra	0.2

1/13/16	Corresp with finra and OC re motion to sever	0.4
1/20/16	Corresp with finra Dept of Enforcement re claim	0.4
1/28/16	Email Dept of Enforcement	0.2
2/4/16	Prepare First Request for Production of Documents and Information.	3.0
2/8/16	Emails with Aegis and finra re stay	0.6
3/18/16	Emails with finra to expedite	0.3
4/1/16	Review Aegis Responses and Objections to List 1 of FINRA Discovery Guide.	0.8
4/4/16	Corresp with Aegis on discovery and arbitrator lists	0.5
4/15/16	Review Aegis Responses and Objections to First Discovery Request.	2.5
5/15/16	Review Aegis First Discovery Request.	1.5
5/26/16	Prepare for and attend Scheduling Conference.	3.5
5/27/16	Prepare proposed list of deadlines and exchange with counsel.	1.0
5/31/16	Review document request	0.4
6/7/16	Review client's account statements and other discovery; prepare Notice of Initial 12506 Disclosures.	2.5
6/8/16	Email from OC re accounts	0.2
6/24/16	Prepare Second Discovery Request; prepare authorization letters.	4.0
6/25/16	Review tax returns and other documents produced by client.	3.5
7/18/16	Prepare Claimant's Responses to Respondents' Request for Documents	2.2
8/9/16	Review request for orders of production	0.3
8/23/16	Review meet and confer letter	0.5
8/24/16	Review orders of production	0.3
9/15/16	Review Aegis email	0.2
9/23/16	Corresp with finra and OC re mediation	0.3
9/26/16	Review discovery re Aegis offerings	0.4

10/6/16	Emails with counsel re: setting mediation conference.	1.5
10/12/16	Telephone conferences with counsel re: selection of mediator/ dates.	1.0
10/14/16	Emails and review statements from Investment Forensics	0.6
10/8/16	Emails with client re mediation	0.7
11/8/16	Emails with OC and finra re scheduling	0.8
11/29/16	Prepare Mediation Submission Packet.	3.0
12/2/16	Review mediator disclosures	0.6
12/12/16	Email client	0.2

Fedex, photocopies, dibursements \$250.00

65.4hrs x \$400.00/hr= \$26,160.00

\$26,410.00

Exhibit D

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
DISPUTE RESOLUTION**

IN THE MATTER OF THE ARBITRATION BETWEEN:

FRANK MULLIGAN and MARIANNE MULLIGAN,

Claimants,

FINRA No. 15-02835

vs.

NATIONAL SECURITES CORPORATION,
AEGIS CAPITAL CORP., ROCCO J. LAVISTA
and TODD HENRICH,

Respondents.

_____ /

LAW OFFICE OF HILTON M. WIENER'S NOTICE OF CHARGING LIEN

Please be advised that pursuant to Section 475 and 475-a of the Judiciary Law of the State of New York, Law Office of Hilton M. Wiener, former attorney for the Claimant, has a charging lien upon the proceeds of this action (including any proceeds derived from a settlement) in whatever hands they may come in the amount of \$26, 410.00 in legal fees and disbursements.

This lien shall not be affected by any settlement between the parties before or after award, judgment, final order or determination.

Please take further notice that pursuant to applicable law, anyone who disregards said lien may be held personally liable to Law Office of Hilton M. Wiener (Judiciary Law Section 475; *LMWT Realty Corp. v Davis Agency, Inc.*, 85 N.Y. 2d 462, 649 N.E. 2d 1183, 626 N.Y.S. 2d 39 (Ct. of Appeals 1995).

Dated January 25, 2017

I certify that a copy of this Notice of Charging Lien was sent via email and certified mail to John Hitchings, Esq., jhitchings@srfllp.com, 61 Broadway, 32 Floor, New York, NY 10006 and Frank and Marianne Mulligan, fxmulligan@msn.com, 832 South Heathwood Drive, Marco Island, FL 34145.

Respectfully submitted,
/s/ Hilton Wiener

Hilton Wiener, Esq.
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