Case No. 80376 COA

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY GARMONG,

Appellant

--against–

WESPAC; GREG CHRISTIAN; DOES 1-10, inclusive

Respondents

Appeal from the Second Judicial District Court of Washoe County, Nevada
Judge Lynne K. Simmons, Case No. CV12-01271

PETITION FOR REHEARING

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Appellant Gregory Garmong is an individual. The undersigned has appeared as counsel for him at all times in the District Court and this Court.

There have been no other counsel for the appellant in the District Court or this Court.

/S/ Carl M. Hebert
CARL M. HEBERT, ESQ.

Attorney for appellant Garmong

Appellant Garmong petitions for rehearing pursuant to NRAP 40.

I. PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (PMPSJ)

A. The Order of Affirmance ("Order") overlooked or misapprehended the mandatory requirement that this Court must review the arbitrator's decision and the district court's affirmance of the denial of Plaintiff's Motion for Partial Summary Judgment ("PMPSJ") *de novo*, without deference to the arbitrator's or the district court's findings.

The first sentence of the Order observes, Garmong "appeals a district court order confirming an arbitration award[.]" The governing law for review of a district court's denial of a motion for summary judgment is set forth in GES, Inc. v. Corbitt, 117 Nev. 265, 268 (2001), discussed at Reply 6:

> [W]e may review the propriety of the district court's summary judgment ruling[.] Our review is de novo and without deference to the district court's findings. Summary judgment is appropriate only when there are no material issues of fact and the moving party is entitled to judgment as a matter of law.

See also Benchmark Ins. Co. v. Sparks, 127 Nev. 407, 411 (2011) and Cromer v. Wilson, 126 Nev. 106, 109 (2010).

A District Court's confirmation of an arbitrator's award is reviewed *de novo* without deference to the arbitrator's findings. Thomas v. City of North Las Vegas, 122 Nev. 82, 97 (2006). Appellant's Opening Brief ("AOB") 5.

The Order overlooks or misapprehends the requirement that this Court must review the arbitrator's denial and the District Court's denial of PMPSJ "de novo and without deference to the district court's findings" or the arbitrator's findings. The statement of Order at 5 suggesting deference to the arbitrator's decision is error.

The arbitrator, the district court, and the Order did not evaluate and decide PMPSJ according to the law, or make findings of fact or conclusions of law. This Court must now do what it is required on all motions for summary judgment: Evaluate *de novo* the Undisputed Material Facts ("UMFs") and their support set forth in PMPSJ, evaluate Defendants' Opposition to PMPSJ and its support, evaluate Plaintiff's Reply, and apply the substantive law to the UMFs. In doing this *de novo* evaluation, this Court will find that Defendants did not submit any admissible evidence in opposition. All Garmong's UMFs were in fact undisputed, the substantive law is clear, and PMPSJ must be granted.

B. If this Court follows the law of Nevada, it has no choice but to reverse the District Court and arbitrator and grant PMPSJ.

UMFs 12-20 (JA 1/65:1-66:66:9), if undisputed, are sufficient to establish liability under the Fifth Claim (JA 1/088:2-7), Sixth Claim (JA 1/091:1-10), Seventh Claim (any of JA 1/093:18-094:5; JA 1/094:17-095:3; JA 1/095:6-15), and Tenth Claim (JA 100:12-18).

The Order overlooked or misapprehended that Wespac/Christian did not

attempt to dispute UMFs 12-20 or even mention these UMFs (JA 3/374:18-23). The Court must review Defendants' Opposition to PMPSJ starting at JA 3/246, and it will find no mention at all of UMFs 12-20.

Because UMFs 12-20 are undisputed, under the applicable law the Fifth, Sixth, Seventh, and Tenth Claims are established. (JA 1/84:9-101:2).

The following sections discuss specific errors in the Order, but pursuant to GES the Court will have to return to the original papers filed in relation to PMPSJ.

C. The Order and the arbitrator overlooked or misapprehended the requirement to follow the procedural law of summary judgment.

The Order does not mention either NRCP 56 in the context of deciding summary judgment motions, or the leading case on summary judgment motions that is discussed extensively in AOB, Wood v. Safeway, 121 Nev. 724 (2005). The arbitrator's orders (3/0366-0369 and 3/0391-039) denied PMPSJ but admitted that "Many of the facts relied upon by Claimant are indeed 'undisputed.' " (JA 3/0392:3). The orders did not discuss a single material fact and did not identify a single material fact in dispute, nor did the arbitrator discuss a single claim.

The Order overlooked or misapprehended that the arbitrator refused to follow the controlling procedural legal authority for analyzing and deciding motions for summary judgment, Wood v. Safeway, Inc., (AOB 2, 10-11, 13, 15-17), which requires the court first to identify which material facts are undisputed, and then to

apply the substantive law to those undisputed material facts.[1] The Order overlooked or misapprehended that the arbitrator refused to identify the specific UMFs that were "undisputed" and refused to discuss a single claim at issue.

Order at 3 includes a block-indented quote from JA 3/392, admitting that "Many of the facts relied upon by Claimant are indeed 'undisputed.' " The quote goes on to state that "Viewed in context, however, the conclusion of the [a]rbitrator then, and now is that they do not entitle [Garmong] to judgment as a matter of law without first affording [Wespac and Christian] the opportunity to defend the claims at a merit hearing." In the second following paragraph, the arbitrator explained the purpose of the "merit hearing": "A merits hearing is particularly appropriate where, as here, the resolution of the claims is so heavily dependent on the opportunity of the parties to test the credibility of the two principle [sic] witnesses, Gregory Garmong and Greg Christian, and on the Arbitrator's opportunity to weigh and assess the credibility of each witness, and all the evidence in that context." This was the sole justification that the arbitrator used to deny PMPSJ.

The Order overlooks or misapprehends the absolute bar to performing a "merit hearing" to evaluate credibility as part of a summary judgment proceeding. The arbitrator refused to decide PMPSJ according to the procedure of Wood on a theory that a "merits" hearing was required as part of the summary judgment proceeding

[1] Indeed, all of the UMFs presented at PMPSJ JA 1/061-066 were undisputed.

" to test the credibility" of the main witnesses. JA 3/392. The Order at 6 justifies this position on a theory that "The arbitrator correctly decided that the material facts centered on alleged verbal conversations between individuals." There were no "verbal conversations" introduced in the summary judgment proceeding, only the paper record with evidence. If there were "conversations," they necessarily were set forth in declarations, which could be disputed.

The order overlooked and misapprehended authority providing that witness credibility may not be assessed in summary judgment proceedings. Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713-14 (2002) ("Neither the trial court nor this court may decide issues of credibility based upon the evidence submitted in the motion [for summary judgment] or the opposition.") This authority was discussed at AOB 22-23.

In view of the arbitrator's admission that "Many of the facts relied upon by Claimant are indeed 'undisputed'" and in view of the absolute ban by the Nevada Supreme Court on testing of credibility in a summary judgment proceeding, the judgment of the District Court was easily reversible as a clear error of law.

D. The Order overlooked or misapprehended the distinction between the summary judgment proceedings and the later hearing.

The two full paragraphs on pg. 6 of the Order seek to justify the arbitrator's decision on PMPSJ by his unrelated actions after the hearing, some 20 months later in the case. The first paragraph refers to "alleged verbal conversations," but as

discussed above, verbal conversations are relevant to motions for summary judgment only if set forth in a declaration or authenticated transcript. The second paragraphs refers to "in his award," which occurred long after the decision on PMPSJ.

The Order overlooks or misapprehends that Garmong appealed only the denial of PMPSJ, not the results of any hearing. This is an important distinction, because the Order improperly attempts to mix arguments and positions from the two distinct proceedings.

In the second paragraph on page 6, the Order relies on alleged analysis by the arbitrator in the hearing. Inasmuch as the Order does not cite any such alleged "analysis" related to the decision on the PMPSJ, it tacitly concedes that there was no such analysis related to the decision on PMPSJ. The date of PMPSJ was November 20, 2017. (1 JA 59-110). The date of the "award" was April 11, 2019, about 20 months later. The merits must be decided based solely upon the PMPSJ papers and decisions.

This second paragraph deals in part with the information concealed from Garmong by Wespac/Christian, and which is alleged in UMFs 16-20 of PMPSJ (JA 1/065-066). The Order overlooks or misapprehends the fact that Wespac/Christian never even attempted to dispute any of the undisputed material facts, including UMFs 16-20. JA 3/286:9-10; 3/288:4-8.

E. Specific facts and law overlooked or misapprehended by the arbitrator, the District Court, and the Order.

AOB 34-49 lists and discusses specific facts and law overlooked or disregarded by the arbitrator, discussed in the AOB, and then overlooked or disregarded by the Order. NRAP 40(a)(2) requires that this Petition for Rehearing address these overlooked or disregarded facts and law.

The arbitrator and the Order overlooked or misapprehended the fraudulent misrepresentations and concealments made to Garmong by Wespac/Christian.

1. Wespac/Christian had a fiduciary duty to Garmong, which they violated. The arbitrator overlooked or misapprehended this fiduciary duty in deciding PMPSJ.

Other than describing the claims, the Order makes no mention of the fiduciary duty of Wespac/Christian to Garmong. This fiduciary duty was a key part of PMPSJ, because it required Wespac/Christian to make full and fair disclosures to Garmong.

The arbitrator disregarded the following misrepresentations and concealments by Wespac/Christian in violaiton of their fiducairy duty.

Wespac/Christian were investment advisors and financial planners. (1/JA 139 to 2/JA 154; 2/JA 224 to 3/JA 231). As a matter of law, financial planners have a fiduciary duty to a client like Garmong. NRS 628A.010(3); NRS 628A.020; Randono v. Turk, 86 Nev. 123, 129 (1970); Perry v. Jordan, 111 Nev. 943, 947 (1995).

All were cited at AOB 24.

2. The Order and the arbitrator overlooked or misapprehended the facts and law establishing violations of NRS 628A.030 by Wespac/Christian in concealing Christian's prior disciplining by the SEC for fraudulent securities practices.

Wespac/Christian first revealed on September 18, 2017 (JA 1/0034:26-0035:4) that Christian had been disciplined and suspended from practice by the SEC for fraudulent securities practices. Garmong first learned of this deception during this lawsuit. UMF 19 (JA 1/0065:26-0066:4) and Garmong Declaration ¶ 34 (JA 3/244:25-27) AOB 26-28.

3. The Order and the arbitrator overlooked or misapprehended the facts and law establishing the failure of Wespac to obey Nevada law requiring that it become licensed as an investment advisor, NRS 90.330, and concealed that fact from Garmong.

Wespac/Christian were "investment advisors." Wespac failed to register as an investment advisor as required by NRS 90.330(1) before it began doing business in Nevada. Concealment of this failure by Wespac and Christian was a violation of NRS 628A.030(2)(a) and (c). JA 1/0035:14; JA 1/0034:25; JA 1/0147l; AOB 28-29) JA 1/0065:10-16 established that Wespac did not register as an investment advisor until September 24, 2008, long after Wespac started delivering investment advice to

Garmong on August 31, 2005. JA 2/0155. Wespac/Christian concealed this violation of law from Garmong.

4. The Order and the arbitrator overlooked or misapprehended the facts and law establishing Wespac's failure to register as a foreign LLC, NRS 86.544, and concealment from Garmong.

NRS 86.544(1) provides: "Before transacting business in this State, a foreign limited liability company must register with the Secretary of State." JA 1/94:15-95:3. PMPSJ (JA 1/0212-0214; AOB 30-31) establishes that Wespac did not register with Nevada as a foreign LLC until October 15, 2008, more than 3 years after commencing business with Garmong on August 31, 2005. (JA 1/0230; UMF 18 (JA 1/0065:22-25). Wespac/Christian concealed this violation from Garmong.

5. The Order and the arbitrator overlooked or misapprehended the facts and law establishing Wespac's violation of federal SEC law requiring a Code of Ethics, and concealing that deficiency from Garmong.

The SEC required investment advisors to have a Code of Ethics and to disclose that Code to customers. JA 1/0156; 1/0162-163; AOB 31. Wespac/Christian had no such Code, and failed to disclose its absence to Garmong in violation of NRS 628A.030(2)(a). Garmong Declaration JA 3/244 ¶¶ 24-29; Exhibits 14-15 to PMPSJ.

6. The Order and the arbitrator overlooked or misapprehended the three fraudulent Christian affidavits filed in this lawsuit.

Defendant Christian filed three false and fraudulent affidavits in this lawsuit. (JA 3/331-333; 3/347-348; 3/350; AOB 32-33). The fraudulent affidavits are discussed in detail in Plaintiff's Reply to Opposition to PMPSJ at JA 3/297:20-301:11. The arbitrator's Orders denying PMPSJ (JA 3/0366 and 3/0391) overlooked or misapprehended the fraudulent affidavits.

7. The Order and the arbitrator overlooked or misapprehended the significance of these violations. If Wespac and Christian had been truthful, Garmong would never have done business with them, they would not have depleted his retirement savings and they would not have gotten the payments he made to them.

The fraud and fraudulent concealment discussed in subsections a-e are highly material. Garmong would not have done business with Wespac/Christian if they had disclosed this information. Garmong Declaration JA 3/244-245, ¶ 35; AOB 33-35.

8. The Order and the arbitrator overlooked or misapprehended the liability of Wespac and Christian under NRS Ch. 628A.

See Perry, Randono, NRS 628A.020, NRS 628A.030 discussed at AOB 35-37. The holdings of all of these case authorities and laws were overlooked or misapprehended by the Order and the arbitrator.

9. The Order and the arbitrator overlooked or misapprehended the liability of Wespac/Christian under NRS Ch. 598. AOB 37.

The liability and damages of Wespac and Christian are discussed at JA1/0084:9-0089:1. The Order and the arbitrator's Orders (JA 3/0366 and 3/0391) overlooked or misapprehended these facts and governing law.

10. The Order and the arbitrator overlooked or misapprehended the liability of Wespac/Christian under Breach of Fiduciary Duty. AOB 37.

The status of Wespac/Christian as fiduciaries for Garmong is undisputed. The fiduciary relationship is a key fact of this case that was argued at length in PMPSJ and in the AOB at, for example, pgs. 1, 20, 23-24, 26-28, 34-37, and 48. Yet the Order and the arbitrator completely overlooked or misapprehended this key fact. Other than listing the claims of the FAC at pg. 2-3, the Order never discusses the fiduciary status of Wespac/Christian and their obligations to Garmong. There is no explanation why both the arbitrator and the Order decided to disregard the fiduciary obligations of Wespac/Christian.

F. Statutory Grounds for Reversing the Arbitrator's Decision on PMPSJ.

1. The Order and the arbitrator overlooked or misapprehended that the decision on PMPSJ in favor of Wespac/Christian was procured by fraud. AOB 38-41.

The Order overlooks or misapprehends NRS 42.005 and Nelson v. Heer, 123 Nev. 217, 225 (2007).

The Order also overlooks or misapprehends the fraud practiced by Wespac/Christian upon Garmong and upon the Court. These frauds are described above.

Order at 7 argues that Garmong has not met his burden of demonstrating fraud.

The Order overlooks or misapprehends perhaps the most egregious fraud, Christian's concealment of his disciplining and suspension by the SEC for fraudulent conduct. Christian never disputed this fraud in relation to PMPSJ or otherwise.

The Order overlooks or misapprehends that Wespac/Christian did not dispute their fraudulent conduct in not disclosing that they had willfully violated their fiduciary duty, and concealed those violations from Garmong. The Order also overlooks or misapprehends the factual evidence that Garmong would never have dealt with Wespac/Christian if they had been honest and forthcoming and disclosed this information. JA 3/244-245, ¶ 35.

Order at 7 seeks to defend Wespac/Christian's fraud by arguing "Garmong alleges that Christian provided false information to the arbitrator." This is not accurate. The Order overlooks or misapprehends that fact that Garmong's allegation was much broader, and neither Wespac/Christian nor the Order indicate a source for this purported statement.

2. The Order and the arbitrator overlooked or misapprehended that no complete, unambiguous contract including an arbitration clause was ever made of record; there was no agreement to arbitrate. (NRS 34.241(1)(e)).

As discussed at AOB 41-45, there is no complete contract with an arbitration clause of record in this case. JA 3/0285:18-25 and 3/0298:5-0301:11. Any such contract would necessarily have included an Agreement, a completed Confidential Client Profile including completed pages 10-11, three different documents named "Exhibit A" and three different documents named "Exhibit B." The Order overlooked or misapprehended Obstetrics and Gynecologists v. Pepper, 101 Nev. 105, 107 (1985), discussed at AOB 42-43, holding that the party asserting the agreement to arbitrate has the "burden of showing that a binding agreement existed." Defendants in this case have never done so.

Upon rehearing, the Court can easily resolve this issue by pointing out precisely where in the record there is such a complete, integrated, binding agreement.

G. Nonstatutory Grounds for Reversing the Arbitrator's Decision on PMPSJ (AOB 45-48).

The Order and the arbitrator overlooked or misapprehended Garmong's special factual circumstances of being elderly, that is, over 60 years of age during the entire time of the dealings with Westpac/Christian and their dissipation of his retirement savings and taking of fees from him. The Order also overlooks or apprehends

governing law, including NRS 598.0933 and 598.0977, and case authority such as Washington v.Glucksberg, 521 U.S. 702, 731 (1997), ("[T]he State has an interest in protecting vulnerable groups-including the poor, the elderly, and disabled persons-from abuse, neglect, and mistakes."), Parsons v. First Investors Corp., 122 F.3d 525, 530 (8th Cir. 1997), ("Fraudulent representations which put the life savings of the elderly at risk are reprehensible and deserve punishment."); Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598 (2000); Estate of Wildhaber ex rel. Halbrook v. Life Care Centers, 2012 WL 5287980 (D. Nev. 2012). See also "Remembering the Forgotten Ones: Protecting the Elderly from Financial Abuse," 41 San Diego L. Rev. 505 (2004) and many other law review articles and treatises on this subject.

Parsons might have been speaking to the facts of the present case, where Defendants established trust by a series of fraudulent misrepresentations, thereafter recklessly dissipating the life savings of an elderly person. All of this authority was known to, and overlooked or misapprehended by, the arbitrator and the Order, see JA 1/0080:18-0081:1.

II. ATTORNEYS FEES

The Order overlooked or misapprehended the precedent that "[W]hen the attorney fees matter implicates questions of law, the proper review is de novo." Thomas v. City of North Las Vegas, 122 Nev. 82, 90 (2006). Here, the attorney fees matter involves interpretation of NRCP 68, JAMS Rule 24, and several case

authorities. The Order did not review the attorneys fees matter *de novo*.

If the arbitrator had properly ruled on PMPSJ, the issue of an offer of judgment and Rule 68 would never have arisen.

The Order recognizes that the parties agreed and the arbitrator ordered, JA 1/14 ¶ 1, that the arbitration would be governed by certain rules, which agreement and order did not include Rule 68. Yet the arbitrator awarded attorneys fees under Rule 68. The foundation of the award is that the arbitrator changed the governing rules without notice to the parties.

Two principles of law, both overlooked or misapprehended by the Order, prohibit the arbitrator from unilaterally changing the governing rules previously agreed upon by the parties. First, the Order and the arbitrator overlooked or misapprehended JAMS Rule 24(c), quoted at AOB 50, stating: "The arbitrator may grant any remedy or relief that is just and equitable and within the scope of the Parties' agreement." The arbitrator has no authority to select rules that the parties had not agreed upon. Second, the Order and the arbitrator overlooked the fact that an agreement between the parties was a contract binding both parties, and that an arbitrator may not modify the contract without consent of both parties. The Order overlooked or misapprehended All Star Bonding v. State of Nevada, 119 Nev. 47, 49 (2003), see AOB 43: "We have previously stated that the court should not revise a contract under the guise of construing it. Further, neither a court of law nor a court

of equity can interpolate in a contract what the contract does not contain." Neither a court nor an arbitrator may unilaterally change the terms of the contractual agreement between two parties, such as the agreement in this case that excluded Rule 68. JA 1/14 ¶ 1.

The Order and the arbitrator also overlooked or misapprehended the fact that, as discussed at AOB 52: "This aspect of the Scheduling Order, expressly stating the rules that would govern the arbitration, was not altered or amended by any subsequent orders issued by the arbitrator. Indeed, this aspect of the Scheduling Order was not ever altered or amended by the arbitrator, nor did the parties ever change their contractual agreement as stated in the Scheduling Order." Wespac/Christian, the arbitrator, the District Court, nor this Court ever identified any subsequent agreement or order reflecting a change in the original agreement and order, JA 1/14 ¶ 1, that excluded Rule 68, nor any order of the arbitrator that purported to include Rule 68.

The arbitrator's action are readily refuted. First, Order at 9 argues that Garmong never objected to the Scheduling Order. Nor, it must be noted, did Wespac/Christian. All parties were satisfied with the Scheduling Order, JA 1/14-15, which excluded Rule 68. The Order does not suggest that Wespac/Christian ever sought to revise their agreement with Garmong or sought to amend the Scheduling Order to include Rule 68.

Second, Order at 9 states that the Scheduling Order "expressly reserves the right of the arbitrator to apply other rules, providing that various listed rules will govern 'unless the [a]rbitrator rules otherwise.' Thus, the scheduling order clearly and expressly confers authority on the arbitrator to decide which rules apply." The Order overlooks or misapprehends that any authority of the arbitrator was limited by the rules governing him, specifically JAMS Rule 24(c),(g) quoted at AOB 50-51. The arbitrator does not have unfettered discretion to select additional rules, unless the parties agree to the change. That is why the Scheduling Order JA 1/14, ¶ 1, expressly stated that "The parties have agreed . . . ." The record reflects that the parties never agreed to add Rule 68, and the arbitrator never issued an order adding Rule 68.

Third, Order at 9-10 states: "But during the proceedings, both parties utilized and relied upon other provisions of the NRCP that are also not mentioned in the scheduling order. For example, the scheduling order does not specifically mention either motions for summary judgment under NRCP 56 nor motions for reconsideration, yet Garmong filed both such motions himself, indicating that he clearly understood the scheduling order to encompass provisions of the NRCP not specifically listed." In making this statement, the Order overlooked or misapprehended terms of the Scheduling Order, JA 1/14-15. JA 1/15, ¶ 6 which states: "The parties may bring motions for summary judgment, pursuant to NRCP 56." JA 1/14, ¶ 1 expressly includes "Washoe District Court Rule 12," whose subsections

(8) and (9) permit "rehearing" and "reconsideration" of decisions on motions. Garmong, unlike Wespac/Christian, played by the rules.

Fourth, Order at 10 states: "Indeed, Garmong never objected to the service of the offer of judgment as impermissible under the scheduling order, nor had he made any effort to seek a ruling from the arbitrator as to NRCP 68's applicability to the proceedings." This is inverted logic. The Order overlooks or misapprehends that there had already been an agreement and order that excluded Rule 68. The shoe was on the other foot. If Wespac/Christian sought to revise the scope of the Scheduling Order to add Rule 68, they had first to persuade Garmong to modify the original agreement of the parties, JA 1/14 ¶ 1, and then move the arbitrator to amend the Scheduling Order. There is no authority suggesting that Garmong needed to move the arbitrator to follow an existing agreement and order.

Fifth, Order at 10 states: "Thus, the most reasonable interpretation of the scheduling order—an interpretation confirmed by the parties subsequent mutual conduct during the proceedings—is that the arbitrator could apply all rules of the NRCP that he deemed appropriate, including NRCP 68." This position is ostensibly supported by the four arguments just discussed, all of which are demonstrably incorrect. Inasmuch as the Order's defense of the award of attorneys fees is based entirely upon the four arguments, all of which are demonstrably incorrect, the award of attorney's fees must be reversed.

In making these remarks, the Order never addresses JAMS Rule 24(c) or All Star Bonding, both of which prohibit unilateral modification.

Order at 9 states, "[Garmong] argues that he mistakenly accepted and relied on the arbitrator's scheduling order in good faith and did not respond to the NRCP 68 offer of judgment because he interpreted the arbitrator's scheduling order to not encompass NRCP 68." The Order overlooks that Garmong never argues that he "mistakenly" did anything, other than trust the Scheduling Order, the arbitrator and the law. The Scheduling Order embodied an agreement between the parties and the arbitrator's responsive order that listed applicable rules, and NRCP 68 was not among them.

The Order overlooks or misapprehends case authority such as Nagib v. Conner, 192 F.3d 127 at *4 (5th Cir. 1999), discussed at AOB 56, that litigants should be able to trust judges (and arbitrators) not to mislead them. That is what happened here. The arbitrator issued the Scheduling Order which did not include Rule 68 as a governing rule, and never said another word until 20 months later when, without modifying the Scheduling Order, he invoked Rule 68 against Garmong.

III. SUMMARY AND CONCLUSION

The Order overlooked or misapprehended virtually every fact and legal authority presented in the AOB. Most egregious was the arbitrator's cavalier treatment of PMPSJ and the addition of Rule 68. The Court must undertake a full-

scale *de novo* review of the orders of the District Court and the arbitrator, and reverse their decisions.

A disreputable California company defrauded an elderly Nevada citizen by concealing the disciplining and suspension of its agent by the SEC and refusing to follow Nevada's laws. This Court should not let stand an arbitration decision which endorses such conduct.

DATED this 4th day of January, 2021.

/S/ Carl M. Hebert
CARL M. HEBERT, ESQ.

Counsel for appellant Garmong

ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this petition has been prepared in a proportionally spaced typeface using WordPerfect 12 in 14 point Times New Roman.

2. I further certify that this petition complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the petition exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains **4,343** words.

3. Finally, I hereby certify that I have read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the petition regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying petition is not in conformity with the requirements of the Nevada

Rules of Appellate Procedure.

DATED this 4th day of January, 2021.

/S/ Carl M. Hebert
CARL M. HEBERT, ESQ.

Counsel for Appellant Garmong

PROOF OF SERVICE

I, Carl M. Hebert, certify that, on January 4, 2021, I served the appellant's Petition for Rehearing on Thomas C. Bradley, Esq., counsel for respondents Wespac and Greg Christian, through the Court's electronic filing system to his e-mail address, tom@tombradleylaw.com, consistent with Nevada Electronic Filing and Conversion Rule 9(c).

DATED this 4th day of January, 2021.

/S/ Carl M. Hebert
CARL M. HEBERT, ESQ.

Counsel for appellant Garmong