



Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group  
**Joan Claybrook, President**

August 12, 2004

Hon. Doug Dean  
Colorado Division of Insurance  
1560 Broadway, Suite 850  
Denver, CO 80202

Hon. J. P. Schmidt  
Hawaii Division of Insurance  
335 Merchant St. Room 213  
Honolulu, HI 96813

Hon. Alice Molasky-Arman  
Nevada Division of Insurance  
788 Fairview Drive  
Carson City, NV 89701-5753

Hon. Alfred W. Gross  
Virginia Bureau of Insurance  
PO Box 1157  
Richmond, VA 23218

Re: Home Buyers Warranty Companies

Dear Commissioners:

We have done a preliminary investigation into the practices of certain home warranty insurance companies and the mandatory arbitration process that is the most prominent feature of the home warranty program. These companies provide liability insurance to homebuilders in the guise of "home warranties." We have found very low claim payouts and questionable relationships among the entities involved. Based upon our preliminary investigation, we request that your departments initiate market conduct examinations of HBW Holdings Group: 2-10 Home Buyers Warranty of Virginia; 2-10 HBW of Nevada; National Home Insurance Co RRG of Colorado; and Residential Ins Co RRG of Hawaii.

It is our belief that the Home Buyers Warranty (HBW) companies are improperly shielding homebuilders from liability for construction defects by directing claims disputes to a biased mandatory arbitration system. Specifically, HBW requires consumers to arbitrate disputes through Construction Arbitration Services (CAS). We have learned that CAS is co-owned by Marshall Lippman, a one-time lawyer who was disbarred by the state of New York for, among other things, stealing from clients. As is explained in greater detail below, diverting construction liability disputes from the public courts to a private, non-transparent adjudication system presents a tremendous opportunity for abuse. It is imperative that regulators scrutinize this process as soon as possible.

## A. The Dangers to Consumers of Mandatory Arbitration Clauses

Advertising literature that HBW directs to homebuilders emphasizes the importance of mandatory arbitration to its “asset protection program.” According to one of HBW’s brochures, mandatory arbitration “reduces lawsuits” and “reduces exposure for out of pocket legal expenses.” See Exhibit 1. There is nothing wrong with parties agreeing to arbitrate disputes to reduce the transaction costs of claims resolution. What is of concern to us is the use of an unfair mandatory arbitration system to reduce the amount of money paid out to claimants.

Arbitration was originally conceived as a way for businesses to settle legal disputes between each other. It was thought that referring cases to an impartial expert, rather than to judges and lay jurors, would remove the need for lengthy, conflicting testimony on business customs or the quality of goods or workmanship.

In the business-to-business context, where both parties are sophisticated and on an equal footing, neither party can dominate the process. But when arbitration is imposed by a business upon a consumer, the business can exert influence on case outcomes by selecting the arbitrator. When the business picks the arbitrator, the arbitrator’s incentive is not to be impartial but to render decisions that the business approves of. A truly impartial provider could not expect to be assigned future cases by that business. Legal experts refer to this dynamic as the “repeat-player effect.” Companies can also direct business to arbitrators with experience in their industry, which guarantees a more sympathetic hearing than they would get from a judge or jury.

Multiplying the dangers of mandatory arbitration in the home warranty context is the very unusual circumstance in which HBW requires arbitration. Currently many states permit insurers to require arbitration of first-party disputes—that is, disputes between the insured and insurer. HBW, by inserting an arbitration clause into closing papers signed by a homebuilder and homebuyer, ensures that disputes with a third-party litigant are arbitrated. An insurer hoping to maintain goodwill and retain current customers has greater incentive to fairly resolve first-party claim disputes than does an insurer dealing with third parties.

It is our suspicion that, because of its mandatory arbitration system, HBW is able to consistently deny or underpay valid claims. We do not have proof. But we note that loss ratios for these companies are low: in 2003, a 49% loss ratio for National Home; 32% for Residential Ins. Co.; and 52% for 2-10 HBW of NV. Our suspicion is further heightened by the unusual history of Construction Arbitration Services, and by its disgraced part-owner and general counsel, Marshall Lippman.

## B. Construction Arbitration Services

About a decade ago, companies realized that they could take advantage of arbitration’s “repeat-player effect” and “sympathy effect” to reduce their liability exposure. At that time, only one major arbitration provider was available, the not-for-profit American Arbitration Association (AAA). But with the advent of widespread mandatory arbitration of consumer disputes, newer, for-profit arbitration providers emerged. One of them was Construction Arbitration Services. Unlike AAA, which was formed as a public service and whose procedures only serendipitously

provide an advantage to businesses over consumers, CAS was apparently formed with the specific purpose of catering to the needs of homebuilders and their insurers in deflecting claims by homebuyers

We infer this from a number of factors:

- **Timing.** CAS did not exist until the mandatory arbitration of consumer claims became common.
- **Irregular Procedures.** Unlike the American Arbitration Association, CAS does not provide parties with any opportunity to strike or challenge proffered arbitrators based upon their potential bias. AAA will give parties the resumes of ten potential arbitrators, allow each side to strike three names, and then rank the remaining arbitrators in order of preference. CAS simply appoints an arbitrator and does not routinely provide his or her resume.

At least one attorney has reported experiences with CAS that struck him as irregular. His account is appended hereto as Exhibit 2.

- **Absence of B2B Dispute Resolution.** Unlike the American Arbitration Association, which handled disputes among construction industry businesses (e.g. developers, contractors, subcontractors, architects) before it handled consumer disputes, CAS doesn't seek business-to-business cases, nor seek cases for submission on a post-dispute basis.
- **Costs to Consumers.** In the early days of mandatory arbitration, companies benefited from a cost barrier—the high fees for arbitration prevented consumers from asserting claims. An outcry by consumer advocates led to a reversal of this policy by major arbitration providers. AAA has set consumer filing fees in most cases at between \$125 and \$375, requiring the business to pay the remainder. National Arbitration Forum followed suit. Judicial Arbitration and Mediation Services (JAMS) requires the business to pay all fees. Yet CAS requires the consumer to pay the entire filing fee—\$500, or more in complex cases.
- **Failure to Comply with California Disclosure Law.** In California, § 1281.96 of the Code of Civil Procedure requires any private arbitration company that administers consumer arbitration to collect and make available certain information relating to each consumer arbitration. A letter from Public Citizen drafted on March 23, 2004 requesting documentation of the disclosures required by California Code of Civil Procedure §1281.96 was acknowledged and denied. The response (dated March 31, 2004) opined, ludicrously, that the statute does not apply because CAS does not administer consumer arbitration cases. See Exhibit 3. This is not the position taken by AAA, which has a 329-page disclosure on its website. As arbitration providers are increasingly replacing the court system, it is important that these unregulated companies operate transparently.
- **Ownership.** The two shareholders of CAS are Marshall Lippman and Lester Wolff. Lippman and Wolff own a group of arbitration service companies which they collectively

call the Impartial Services Group. One, the National Center for Dispute Settlement, competes with the Better Business Bureau to arbitrate auto warranty claims. They also are associated with other companies, including the National Institute of Continuing Medical Education, LLC and Elections Unlimited, LLC. All of the Lippman/Wolff owned companies share the same address: 2777 Stemmons Freeway, Suite 1425, Dallas, Texas 75207.

According to his biography on the CAS website, Lester B. Wolff formerly worked for Homeowners Warranty Corporation, the now-defunct insurer that provided the same type of policies as HBW. His previous association with such a company casts serious doubt as to whether CAS can truly be impartial in deciding construction liability cases.

Marshall Lippman, an owner of and General Counsel for CAS, is a disbarred attorney. He was disbarred in the state of New York in 1997 for intentionally converting client funds, egregiously neglecting client matters, lying under oath to the hearing panel and failing to cooperate with the investigation of his case. See Exhibit 4. Reciprocal disbarment was ordered in the District of Columbia in 2002. See Exhibit 5. Yet Lippman has on more than one occasion filed perjurious affidavits claiming that he is still a licensed attorney in the District of Columbia. See Exhibit 6.

Mr. Lippman's position in CAS is analogous to that of a supervisory judge in a court system. If you are one of the many thousands of Americans who buy newly constructed homes each year, Mr. Lippman wields more influence over your life than the Chief Justice of the United States. It is simply shocking that someone with this record of dishonesty has been entrusted by insurers with so much power.

Finally, it is clear from the long list of business concerns operated by Lippman and Wolff that arbitration is one of several money-making ventures they operate, and that CAS does not have the public-service orientation that characterizes the American Arbitration Association.

### C. Arbitration Clauses in Insurance Contracts Violate Hawaii and Virginia Law

Laws in eleven states prohibit mandatory arbitration in insurance contracts (those states are Arkansas, Georgia, Hawaii, Kentucky, Louisiana, Nebraska, Oklahoma, South Carolina, South Dakota, Virginia and Washington). In Hawaii and Virginia, statutes provide that "No insurance contract...shall contain any condition, stipulation, or agreement... depriving the courts of this [State/Commonwealth] of jurisdiction in actions against the insurer..." (HRS 431:10-221; Va. Code Ann. 38.2-312) The warranties issued by HBW companies unquestionably meet the statutory definition of insurance. The certificates of warranty coverage that they issue state that the consumer is "insured by" the HBW company (See Exhibit 7) and the brochures for the 2-10 HBW Asset Protection Program state that the program "combines the proactive risk management aspects of a third-party insured warranty with general liability insurance" for the builder. The arbitration clause is contained in a document prepared by the insurer. See Exhibit 8.

In a letter to a Texas state legislator, Marshall Lippman indicated that CAS arbitrated warranty disputes in all fifty states. See Exhibit 9. While we do not know first-hand of any homebuyers being forced into arbitration in Hawaii or Virginia, we must assume that this is likely and ask that this possibility be investigated in those two states.

We appreciate your consideration of our request and ask that you keep us informed of any actions taken by your departments to investigate and/or stop any consumer abuses by these companies.

Respectfully submitted,

Jackson Williams,  
Legislative Counsel, Public Citizen  
and  
Funded Consumer Representative to the NAIC

**2-10 HBW® AND  
INSURANCE SERVICES, L.L.C.**

2-10 HBW® and HBW Insurance Services, L.L.C. understand the financial and litigation exposures your company faces as well as the pressure on your profits. The **2-10 HBW Asset Protection Program®** (APP) addresses both issues proactively to help drive positive business results for you and your company.

*For more information on the  
2-10 HBW Asset Protection Program® contact  
HBW Insurance Services, L.L.C at  
**1.800.793.5884** or  
2-10 HBW® at **1.800.488.8844**  
or visit our web site  
**www.2-10.com***

Get the combined protection of the 2-10 HBW®  
2-10 warranty and multi-line insurance in a  
convenient, cost-savings package.

- ◆ Third-party insured 2-10 warranty
- ◆ Commercial general liability
- ◆ Property
- ◆ Commercial automobile
- ◆ Tools and equipment
- ◆ Builder's risk
- ◆ Umbrella



General Liability insurance is not available in all states and has limited availability in some states. APP is offered by HBW Insurance Services, L.L.C. 2-10 HBW is a registered mark of Home Buyers Warranty Corporation ©2003 Home Buyers Warranty Corporation

HBW 3001 (02/03)

**Proactive  
Cost-Effective  
Risk Management  
& Loss Control  
Program**

*The 2-10 HBW  
Asset Protection Program*

**2-10**  
Home Buyers Warranty  
**America's  
Choice**

AMERICA'S CHOICE

## INSURANCE MARKET UPDATE

General liability premiums are **increasing** 20% to 40% per year and the insurance carriers are **eliminating** critical coverages. Appellate Courts are ruling that faulty workmanship is **not covered** by the builder's general liability policy.

Construction defect **claims** and the related **litigation** are at epidemic levels, and your hard-earned profits are under attack.

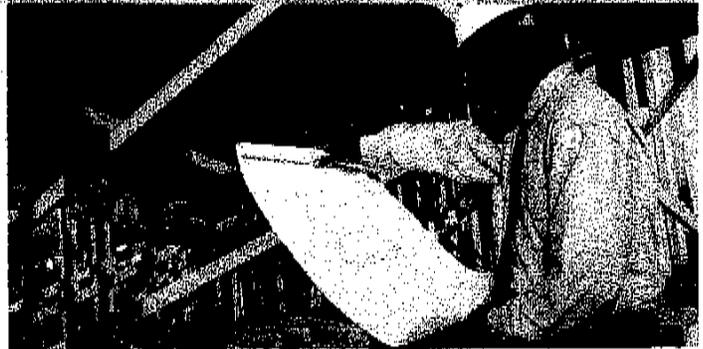
## IMPACT ON THE BUILDER'S ASSETS AND PROFITS

When coverage is eliminated by either the **insurance company** or the **courts**, the builder is **liable** for repairing the problem and for the payment of related **legal expenses**. Repairs and the payment of legal costs can be significant, **eliminating** not only your **profits** but putting the **future** of your business at risk.



Home Buyers Warranty<sup>®</sup>  
HBW Insurance Services, L.L.C.

\*See warranty and insurance policy contract and documents for specific details and considerations



## FEATURES AND BENEFITS OF THE 2-10 HOME BUYER ASSET PROTECTION PROGRAM

**We have the answer...** a cost-effective program that combines the proactive risk management aspects of a third-party insured warranty with general liability insurance.

- ◆ Builder's **exposure** to construction defects is **decreased** with a written warranty which clearly defines the builder's legal liability for one-year workmanship, two-year systems and ten-year structural defect coverage.\*
- ◆ The 2-10 warranty document provides for **mandatory** and **binding** arbitration if disputes arise between the homeowner and the builder. The warranty **clearly defines** the builder's **legal liability**, future obligations and **reduces lawsuits**.
- ◆ Arbitration provision **reduces exposure** for out of pocket **legal expenses**.
- ◆ Claims are coordinated between the **warranty** and the general liability **insurance policy**, resulting in a more **efficient** claims handling process.
- ◆ This program provides the **best protection** available today to limit the builder's legal liability to the terms and conditions of both the insurance policy and the insured warranty.
- ◆ Third-party, insured structural warranty **covers** defects in designated load-bearing elements shifting the builder's risk of covered structural defect losses to the warranty insurance carrier.\*

**From:** "Cass McKenzie" <cmckenzie@mrhllc.com>  
**To:** "Samantha Coulombe" <scoulombe@citizen.org>  
**Date:** 4/13/04 4:46PM  
**Subject:** RE: Request for information re: CAS

Dear Samantha,

My client, the Oakcrest Homeowners Association, Inc. was assigned to arbitration with CAS in a case entitled Oakcrest Homeowners Association, Inc. v. Al Barakah, LLC et al. Our case administrator from ADC was Karen Ballew. CAS arbitrarily assigned us an arbitrator named Maxwell Boten. Upon discussions with Mr. Boten I learned that his background basically consisted of being a retired insurance defense attorney from Iowa. Given that our case was directly against a defendant who was represented by an attorney hired by their insurance carrier, my client was disappointed that we were provided with an arbitrator whose employment background basically consisted of representing the type of clients who we were up against in the case.

As the case proceeded, my client became increasingly concerned with the rulings we were receiving from Mr. Boten. For example, initially Mr. Boten wanted to hold the arbitration at the law office of the Defendant, based on the position that it was close to his house and therefore easier for him to travel to that location. After continued opposition based on the potentially prejudicial effect to my client, Mr. Boten agreed to hold the arbitration at a hotel. The defendant argued that Plaintiff would have to pay for the costs of this hotel because the arbitration could be held at their office for free.

Secondly, Mr. Boten ruled that homeowners would not be allowed to attend the arbitration. This ruling was especially disturbing given the fact that it had only been discussed between the attorneys for the parties, and Mr. Boten informed me that "he would not allow homeowners to attend the arbitration" before I had ever raised the issue with him for discussion. The nature in which this ruling was made suggested to my client that Mr. Boten had discussed this matter directly with the defense attorney and made his decision before it was ever discussed with the Plaintiff.

This ruling was further troubling given the fact that the Rules & Procedures for the Expedited Arbitration of Home Construction Disputes, issued by CAS provides:

a. Attendance.

(ii) All persons having a direct interest in the arbitration as well as representatives and witnesses are entitled to attend the hearing.

It is hard to imagine that the homeowners, whose homes were at question in the case, were not "persons having a direct interest in the arbitration."

Although we never proceeded to arbitration, because the case settled, my client was concerned with nature of these rulings.

If I can provide any further information, please do not hesitate to \_\_\_\_\_

Exhibit 2

contact me.

Cass McKenzie

-----Original Message-----

From: Samantha Coulombe [mailto:[scoulombe@citizen.org](mailto:scoulombe@citizen.org)]

Sent: Tuesday, April 06, 2004 8:39 AM

To: Cass McKenzie

Subject: Request for information re: CAS

Mr. McKenzie:

Thank you for taking the time to speak with me this morning about your experiences with Construction Arbitration Services, Inc.

Public Citizen is a national, nonprofit consumer advocacy organization founded in 1971 to represent consumer interests in Congress, the executive branch and the courts. Public Citizen's Congress Watch champions consumer interests before the U.S. Congress and serves as a government watchdog. The goal of Public Citizen's Civil Justice Program is to ensure that consumers are protected and public health and safety are maintained through a fair and accessible court system.

As you know, we are currently investigating Construction Arbitration Services, Inc. and its officers. Any written materials that you could provide detailing your experiences with CAS would be very useful to our effort.

You can send the materials to me via email at [sacoulombe@citizen.org](mailto:sacoulombe@citizen.org) or fax at 202-546-5562. If you decide to compose an original letter or fax, please address it to both myself and Jackson Williams.

Thanks Again!

Samantha Coulombe  
Civil Justice Fellow  
Public Citizen's Congress Watch  
215 Pennsylvania Avenue SE  
Washington, DC 20003  
202-454-5151



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Construction Arbitration Services, Inc.

March 31, 2004

Jackson Williams, Esq.  
Legislative Counsel  
Public Citizen  
215 Pennsylvania Ave. SE  
Washington, DC 20003

Dear Mr. Williams:

This will acknowledge receipt of your letter dated March 23, 2004.

We are familiar with the provisions of California Code of Civil Procedure § 1281.96. Construction Arbitration Services, Inc. does not administer cases which we consider "consumer arbitration." We have reached this conclusion after analyzing the language of the statute (which does not provide a definition) and the definitions found in other California statutes such as The Song-Beverly Consumer Warranty Act (California Civil Code § 1790. et seq.)

Yours very truly,

A handwritten signature in black ink, appearing to read "Lester B. Wolff", is written over the typed name.

Lester B. Wolff

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Exhibit 3

Westlaw.

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C

Supreme Court, Appellate Division, First  
 Department, New York.

In the Matter of Marshall E. LIPPMAN, (admitted  
 as Marshall Elliott  
 Lippman), an attorney and counselor-at-law.  
 Departmental Disciplinary Committee for the First  
 Judicial Department,  
 Petitioner,  
 Marshall E. Lippman, Esq., Respondent.

July 17, 1997.

Disciplinary proceeding was brought. The  
 Supreme Court, Appellate Division, held that  
 intentional conversion of client funds, "egregious"  
 neglect of client matters, lying under oath to hearing  
 panel, and failure to cooperate with investigation of  
 case, warranted disbarment.

Disbarment ordered.

West Headnotes

**Attorney and Client** ↪58  
 45k58 Most Cited Cases

Intentional conversion of client funds, "egregious"  
 neglect of client matters, lying under oath to hearing  
 panel, and failure to cooperate with investigation of  
 case, warranted disbarment. Code of Prof.Resp.,  
 DR 1-102, subd. A, pars. 4, 5, 8; DR 6-101, subd.  
 A, par. 3; DR 7-101, DR 7-102, subd. A, par. 5;  
 DR 9-102, subds. A, C, par. 4, McKinney's  
 Judiciary Law App.

\*\*195 \*69 Raymond Vallejo, of counsel (Hal R.  
 Lieberman, attorney), for petitioner.

No appearance for respondent.

Before NARDELLI, J.P., and WILLIAMS, TOM,

MAZZARELLI and ANDRIAS, JJ.

PER CURIAM.

Respondent, Marshall E. Lippman, was admitted to  
 the \*70 practice of law in the State of New York by  
 the First Judicial Department on February 25, 1974,  
 as Marshall Elliott Lippman. At all times relevant  
 to this proceeding, respondent maintained an office  
 for the practice of law within the First Judicial  
 Department.

Respondent was charged with 23 counts of  
 professional misconduct relating to five different  
 client matters. The charges alleged that respondent  
 converted client funds and third-party funds that he  
 was to hold in escrow and that he failed to preserve  
 the identity of client funds. Respondent was also  
 charged with having engaged in a pattern of neglect  
 of clients' cases over several years and  
 misrepresenting the status of cases to his clients.  
 Finally, respondent was charged with failure to  
 cooperate with the Departmental Disciplinary  
 Committee (DDC) during the course of its  
 investigation and with engaging in conduct  
 prejudicial to the administration of justice.

After hearings held over six days, the Hearing  
 Panel issued its findings and conclusions, sustaining  
 most of the charges and giving respondent the  
 opportunity to present evidence in mitigation.

Thereafter, the Hearing Panel issued its final report  
 and the DDC seeks an order confirming the Hearing  
 Panel's findings of fact and conclusions of law and  
 imposing the recommended sanction of disbarment.

By cross motion, respondent asks this Court to  
 disaffirm certain charges and confirm other charges.  
 He also seeks to confirm the Hearing Panel's  
 dismissal of charges and to disaffirm the Hearing  
 Panel's recommendation of disbarment.

*The Sheehy Matter (Charges 1 to 3)*

In April of 1989, respondent represented Kerbs

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 Exhibit 4

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Florist in a transaction involving the lease and purchase of a flower store by Thomas Sheehy. On or about April 21, 1989, respondent received a \$10,000 downpayment from Mr. Sheehy in connection with that transaction and on April 24, he deposited the funds in his attorney trust account at First American Bank of New York. By June 30, 1989, the balance in that account had dropped to only \$4,802.22.

At some point thereafter, the transaction fell through and Mr. Sheehy demanded the return of his deposit. Respondent refused and Mr. Sheehy obtained a judgment in Nassau \*\*196 County for \$12,189 in November of 1989. A year later, respondent finally satisfied the judgment but did so by making four payments to Sheehy's counsel.

\*71 At the hearings, respondent admitted that he transferred the Sheehy funds from his trust account to his operating account in April of 1989 and that the balance in his operating account thereafter fell to only about \$5,300. In explanation, respondent testified that, just prior to receiving the Sheehy funds, he had opened a money market account at Republic Bank in Washington, D.C. with \$10,000 of his personal funds because he was planning on relocating there and at the suggestion of his accountant he had created a "mental trust account" in Washington that contained, at all times, adequate funds to return the Sheehy deposit. Nonetheless, respondent admitted that he did not pay over the trust funds when presented with the judgment but he eventually paid in four installments.

Respondent's accountant did not corroborate his story. The accountant testified that he had instructed respondent to put the Sheehy funds in an account designated as trust funds and earmarked for the Sheehy transaction.

As did the Hearing Panel, we reject the explanation offered by respondent, finding it to be "false and a blatant misrepresentation ... incredible and unworthy of belief."

We agree with the Hearing Panel's conclusion that respondent intentionally converted the Sheehy funds to his own use, and gave false testimony under oath to the Panel, in violation of DR 1-102(A)(4) (22 NYCRR 1200.3) (engaging in conduct involving dishonesty, fraud, deceit and misrepresentation). Also, we agree that the evidence established that

respondent failed to preserve the identity of trust funds in violation of DR 9-102(A) (22 NYCRR 1200.46) and that his overall conduct in this matter was prejudicial to the administration of justice, in violation of DR 1-102(A)(5).

Accordingly, the Hearing Panel's findings as to charges 1, 2 and 3 are confirmed.

*The Lemma Matter (Charges 4 to 7)*

Respondent was retained in 1986 by Lemma Realty Corp. to handle its legal matters. In that capacity, respondent obtained a judgment against 29 Cornelia Street Owner's Corp. in March of 1987 in the amount of \$48,261. Respondent never executed on the judgment he obtained. He did, however, charge Lemma \$3,000 to cover expenses related to execution of the judgment and thereafter falsely advised Lemma that the judgment had been entered with the County Clerk and forwarded to the City Marshall for collection. At the hearings, respondent asserted \*72 that he had returned the \$3,000 payment but never produced any documentation for that claim. In light of the foregoing, the Hearing Panel sustained charges 4 through 7.

Charge 4 alleged violation of DR 6-101(A)(3) (22 NYCRR 1200.30) (neglecting a legal matter); charge 5 alleged violation of DR 1-102(A)(4) (intentionally converting client funds to his own use); charge 6 alleged violation of DR 7-102(A)(5) (22 NYCRR 1200.33) (knowingly making a false statement of fact); and charge 7 alleged violation of DR 9-102(A) (failing to preserve the identity of client funds).

We find that respondent's assertion that he refunded the money is insufficient to rebut the Hearing Panel's determination that he did intentionally convert client funds to his own use in violation of DR 1-102(A)(4).

Further, while respondent admits that he wrote a letter to the Lemmas stating that he had forwarded the execution to the Sheriff's office although that was not in fact true, he contends that this fact should not support a finding that he knowingly made a false statement of fact because, he claims, he truly believed that an associate he employed had taken such steps. We find this conclusory assertion to be self-serving and without merit. Accordingly,

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we confirm the findings of charges 4 through 7.

*The Lipton Matter (Charges 8 to 11)*

In this matter, the Hearing Panel sustained only Charge 10, which accused respondent of violating DR 6-101(A)(3) by failing to communicate with his client regarding the status of her civil action against her landlord.

Respondent admitted that, in December 1988, he agreed to represent Carol Lipton, Esq. in an action against her landlord, Gordo \*\*197 Realty, involving damages from a flood in her apartment. To that end, respondent commenced suit in Kings County Civil Court on or about December 21, 1988. At the same time, respondent filed an action in Housing Court against Gordo on Lipton's behalf. In February of 1989, Lipton retained another attorney to represent her in the Housing Court matter but continued to have respondent represent her in the Civil Court action. In May of 1989, Lipton signed a stipulation of settlement in the Housing Court action.

At the hearing, Ms. Lipton testified that she never intended for the Housing Court settlement to affect the Civil Court action, \*73 did not authorize respondent to sign the stipulation, and was never advised of the discontinuance by respondent. After finally learning about the stipulation, Ms. Lipton made many attempts to contact respondent to no avail. When she finally reached him, he denied having signed the stipulation and insisted that his signature was forged. Thereafter, it took respondent nine months to submit an affidavit stating that he had no knowledge of the stipulation being signed.

We agree with the finding of the Hearing Panel that there was no conclusive proof that respondent actually signed the stipulation. However, respondent's neglect of his client and refusal to communicate with her were amply established and, accordingly, the Hearing Panel's finding as to Charge 10 is confirmed.

*The Long Matter (Charges 13 to 19)*

In this case, respondent was charged with seven violations of the Code of Professional Disciplinary Rules: charges 13, 14, 16 and 17 alleged that he had violated DR 6-101(A)(3) (neglecting a legal

matter); charge 15 alleged that he had violated DR 7-101 (22 NYCRR 1200.32) (failing to seek the lawful objectives of his client); charge 18 alleged violations of DR 6-101(A)(3) and DR 9-102(c)(4) (neglecting a legal matter and failing to return property to his client); charge 19 alleged violation of DR 1-102(A)(7) [now (8)] (conduct adversely reflecting his fitness to practice law). The Hearing Panel concluded that respondent had "egregiously neglected Mr. Long's legal matters entrusted to him in violation of DR 6-101(A)(3)" and that by doing so, respondent engaged in conduct adversely reflecting on his fitness to practice law, in violation of DR 1-102(A)(7) [now (8)]. Respondent does not contest the Hearing Panel's findings with regard to the *Long* matter. As respondent actually concedes that the evidence establishes that he neglected Mr. Long's cases, we confirm the Hearing Panel's findings of misconduct with regard to this matter and its dismissal of charges 15 and 18.

*The Cappetta Matter (Charges 20 to 23)*

With respect to this matter, respondent was charged with four violations of the Disciplinary Rules: charge 20 alleged violation of DR 6-101(A)(3) (neglect); charge 21 alleged violation of DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation); charge 22 alleged violation of DR 9-102(C)(4) (failure promptly to deliver a \*74 client's property when so asked); and charge 23 accused him of violation DR 1-102(A)(7) [now (8)] (conduct adversely reflecting on his fitness to practice law). The Hearing Panel sustained charges 20, 21, and 23. Respondent challenges only the finding as to charge 21; in fact, he concedes that "it cannot be contested ... that [he] neglected his client's legal matter."

Respondent had been retained by Mr. Cappetta to sue his former employers. Eventually, Mr. Cappetta brought an action in Federal Court against respondent for malpractice stemming from his representation. In that case, both Magistrate Judge Dollinger and District Judge Sotomayer found respondent's neglect of the Cappetta matter to be incredible. In part, Judge Dollinger wrote:

[Respondent] entirely failed to carry out his responsibilities to his client by not pursuing the claims that he had undertaken to assert, he failed to appear for required conferences or to respond to crucial motions, and he failed to advise his client of developments in the case, even when

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[Cappetta] persistently inquired. Moreover, the excuses proffered by Lippman are entirely threadbare.... Thus, even if credited, Mr. Lippman's testimony in no respect excuses his conduct.

\*\*198 In any event, in general terms I find his testimony in this respect unworthy of belief. As noted, his conduct at all times reflected a total abnegation of responsibilities.... In short, I conclude that Lippman's failings in representing [Cappetta] were entirely inexcusable.

District Judge Sotomayer was no less critical when she affirmed the default judgment for malpractice. In fact, she was so outraged with respondent, particularly with regard to his habit of lying about where he resides in order to continue receiving the benefit of the City's rent control laws, that she ordered a transcript of the proceedings before her sent to the New York State Bar Association for disciplinary action.

Based on the Federal court decisions, the Hearing Panel correctly concluded that the evidence established that respondent neglected a legal matter entrusted to him (in violation of DR 6-101(A)(3)) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation (in violation of DR 1-102(A)(4)), which constituted conduct reflecting adversely on his fitness to practice law (in violation of DR 1-102(A)(7) [now (8)]).

#### *Charge Twelve*

Finally, the Hearing Panel sustained a charge that respondent violated DR 1-102(A)(5) by failing to cooperate with the \*75 Committee's investigation. Thus, Rosemary Palladino, Esq., former staff counsel at the DDC, testified that respondent treated the Committee's investigation with the same pattern of neglect that he showed toward his client's cases. As one example, respondent still had not turned over to the Committee a copy of the check by which he allegedly repaid Lemna the \$3,000 fee.

Respondent was given the opportunity to present evidence in mitigation and responded by submitting various character letters from friends, clients and associates. All attested to his good character and integrity notwithstanding the Hearing Panel's findings.

Respondent also submitted documents purportedly signed by Charles and/or Joseph Lemna that stated

they had been repaid their \$3,000 by respondent. Respondent did not, however, produce a copy of the payment check.

Respondent has received two prior admonitions. The first, issued December 15, 1989, admonished respondent for neglecting the affairs of a client. The second, issued May 23, 1990, admonished respondent for misrepresenting his clients' financial situations to lenders.

We agree with the finding of the Hearing Panel that respondent intentionally converted client funds, as well as engaged in a pervasive pattern of neglecting client matters, and misrepresenting the facts to, among others, Federal judges and the Hearing Panel.

This Court has consistently held that the intentional conversion of client funds constitutes grave misconduct warranting the sanction of disbarment (see, e.g., *Matter of Barih*, 218 A.D.2d 304, 638 N.Y.S.2d 447; *Matter of Ampel*, 208 A.D.2d 57, 624 N.Y.S.2d 116). Since we confirm the findings of the Hearing Panel, which sustained several charges that respondent converted the funds of clients and third parties, disbarment is warranted.

The sanction of disbarment is additionally supported by the findings of egregious neglect of client matters, lying under oath to the Panel, and failing to cooperate with the investigation (see, e.g., *Matter of Stein*, 189 A.D.2d 128, 596 N.Y.S.2d 8). Finally, we note, respondent has received two prior admonitions and throughout the disciplinary proceeding, respondent has failed to show remorse for his misconduct.

Accordingly, the petition by the DDC is granted, the Hearing Panel's report is confirmed, respondent's cross motion is denied, and respondent is hereby disbarred from practice as an attorney and counselor-at-law in the State of New York.

\*76 All concur.

661 N.Y.S.2d 195, 232 A.D.2d 69

END OF DOCUMENT

*Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.*

**DISTRICT OF COLUMBIA COURT OF APPEALS**

No. 01-BG-921

IN RE MARSHALL E. LIPPMAN, RESPONDENT.

A Member of the Bar  
of the District of Columbia Court of Appeals

On Report and Recommendation  
of the Board on Professional Responsibility  
(BDN 240-01)

(Submitted September 12, 2002

Decided September 26, 2002)

Before REID and GLICKMAN, *Associate Judges*, and BELSON, *Senior Judge*.

PER CURIAM: On July 17, 1997, the Supreme Court of the State of New York, Appellate Division, First Judicial Department, disbarred respondent Marshall E. Lippman after concluding that he intentionally converted client funds to his personal use in two cases, lied under oath, and engaged in a pervasive and egregious pattern of neglecting client matters. *See In re Lippman*, 661 N.Y.S.2d 195 (N.Y. App. Div. 1997).

After Bar Counsel filed a certified copy of the disciplinary order with this court, we temporarily suspended respondent pursuant to D.C. Bar R. XI, § 11 (d), and referred the matter to the Board on Professional Responsibility ("the Board"). The Board recommends reciprocal disbarment. Bar Counsel has informed the court that she takes no exception to the Board's recommendation. Respondent has not filed any opposition to the Board's recommendation.

There is a rebuttable presumption that the sanction imposed by this court in a reciprocal discipline case will be identical to that imposed by the original disciplining court.

*In re Zilberberg*, 612 A.2d 832, 834 (D.C. 1992). This presumption is rebutted only if the respondent demonstrates, or the face of the record reveals, by clear and convincing evidence the existence of one of the conditions enumerated in D.C. Bar R. XI, § 11 (c). *See* D.C. Bar R. XI, § 11 (f).

Respondent's failure to file any exception to the Board's report and recommendation is treated as a concession that reciprocal disbarment is warranted. *In re Goldsborough*, 654 A.2d 1285, 1287 (D.C. 1995); *see also* D.C. Bar R. XI, § 11 (f). Disbarment is the appropriate sanction in nearly all cases of intentional misappropriation, *In re Addams*, 579 A.2d 190 (D.C. 1990) (en banc), and the record supports the Board's recommendation in this case. Accordingly, it is

ORDERED that Marshall E. Lippman is hereby disbarred from the practice of law in the District of Columbia. We direct respondent's attention to the requirements of D.C. Bar R. XI, § 14 (g) and their effect on his eligibility for reinstatement. *See* D.C. Bar R. XI, § 16 (c).

*So ordered.*



alternative dispute resolution services.

3. Construction Arbitration Services, Inc. is a full service alternative dispute resolution service furnishing mediation and arbitration services to homeowners, builders and home inspectors in all fifty states of the United States.

4. Construction Arbitration Services, Inc., is a corporation incorporated in the State of Texas in 1995 with its principal place of business at 2777 Stemmons Freeway, Suite 650, Dallas, Texas 75207, Telephone (214) 638-2700.

5. Following the incorporation of Construction Arbitration Services, Inc., Edward Hatfield, former Commissioner of the Federal Mediation and Conciliation Service and former President of the Society of Professionals in Dispute Resolution, participated in the initial and follow-up training of the administrative personnel and arbitrators of Construction Arbitration Services, Inc. To date, Construction Arbitration Services, Inc. has administered thousands of arbitration proceedings involving residential construction disputes.

6. Construction Arbitration Services, Inc., presently has a panel of approximately 1,200 professional arbitrators throughout the United States, each of whom is required to and does have at least ten years experience in construction-related alternative dispute resolution services. The average panel member of Construction Arbitration Services, Inc., has substantially more experience in construction-related alternative dispute resolution than the average panel member of the American Arbitration Association or any other nationwide alternative dispute resolution service. Construction Arbitration Services, Inc., is the largest alternative dispute resolution service in the United States specializing in construction-related disputes.

7. Construction Arbitration Services, inc., performs arbitration services for a

2 AFFIDAVIT OF MARSHALL E. LIPPMAN

NEWCOMB, SABIN, SCHWARTZ & LANDSVERK LLP  
111 S.W. Fifth Avenue, Suite 4040  
Portland, Oregon 97204  
(503) 228-8446

variety of business entities and individuals pursuant to pre-dispute arbitration agreements in a variety of contracts, including home warranty contracts, residential real estate sale contracts, and home inspection contracts.

8. The other shareholder of Construction Arbitration Services, Inc., is Lester B. Wolff, who is currently the President of and a member of the Board of Directors of Construction Arbitration Services, Inc. Mr. Wolff and I created Construction Arbitration Services, Inc., in 1995. Mr. Wolff is a former Vice President of the American Arbitration Association.

9. Construction Arbitration Services, Inc., was capitalized exclusively by Mr. Wolff and by myself. None of the initial capitalization, pre-incorporation or post-incorporation expenses have come from any home builder, construction company, insurance company, home warranty company or any other entity, except through the payment of standard and uniform fees charged by Construction Arbitration Services, Inc., for its services. No person or entity other than Mr. Wolff and myself has ever made any investment in or has ever owned any equity in Construction Arbitration Services, Inc.

10. At no time has any construction company, home warranty provider, or insurance company had any control over or ownership interest in Construction Arbitration Services, Inc., directly or indirectly, or had any common officer, director or employee or had the right to control the selection of any arbitrator by CAS or the decision of any arbitrator selected by CAS.

11. I have reviewed the arbitration clause in the construction contract between Adair Homes and Paul and Renee Haynes. A dispute within the scope of their contractual arbitration clause, specifies CAS Rules, and would be governed by

3 AFFIDAVIT OF MARSHALL E. LIPPMAN

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arbitration rules of Construction Arbitration Services, Inc., applicable to disputes that do not arise under a New Home Warranty. Those Rules are formally styled "Rules and Procedures for the Expedited Arbitration of Home Construction Disputes," a true and correct copy of which is attached as Exhibit 1 to this Affidavit. Under these Rules an arbitration is subject to a case fee of \$500 at time of filing, generally paid by an equal division between the parties.

12. When our Rules use the term "Expedited" in their title, the process described by the Rules is a version of our "Expedited Dispute Settlement" ("EDS") process. "EDS" is a form of Mediation-Arbitration or "Med-Arb." First popularized in the early 1960's, this process uses the third-party neutral as a mediator to explore amicable resolution with the parties and, if unsuccessful, moves into a traditional arbitration process. Med-Arb is a well-known and highly regarded process. It is generally less time consuming than either mediation alone or arbitration alone and yet gives the parties an opportunity for settlement on some or all issues and the certainty of a decision on issues left unresolved. It is well accepted and commonly used. Pursuant to our expedited dispute resolution process, the assigned arbitrator may first serve as mediator attempting to resolve the dispute and then, if unsuccessful proceed directly to arbitration. This is consistent with the agreement of the parties.

I swear, under penalty of perjury, that the foregoing is true and correct and that I executed this affidavit in Dallas, Texas on this 11<sup>th</sup> day of February, 2003.

AFFIANT SAYETH NOTHING FURTHER.

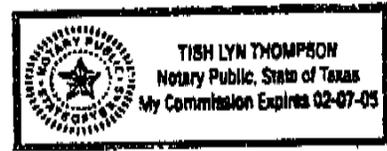
4 AFFIDAVIT OF MARSHALL E. LIPPMAN  
NEWCOMB, SABIN, SCHWARTZ & LANDSVERK, LLP  
111 S.W. Fifth Avenue, Suite 4000  
Portland, Oregon 97204  
(503) 228-8446

*Marshall E. Lippman*  
MARSHALL E. LIPPMAN

Subscribed and sworn to before me, a Notary Public, on this 12<sup>th</sup> date of  
February, 2003.

*Tish Lyn Thompson*  
Notary Public

My Commission Expires: 02/07/05



J:\Adair-Pacific Crest\Haynes\Affidavit.wpd

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**Home Buyers Warranty***Certificate of Warranty Coverage*PRINTED  
04/12/00

Warranty # TX102293



Home Buyers Warranty®

ANY L. WEAVER  
6207 CANYON RUN CT  
KATY, TX 77450

Insured by:  
National Home Insurance Co. Inc.  
(A RISK RETENTION GROUP)

Your Builder ROYCE HOMES L.P. \*SR\* HBW Builder # 3300-9993  
has completed the enrollment application process. Your home has now been enrolled in the following  
warranty program with an effective date of warranty of 03/03/00

One Year Workmanship/Two Year Systems/Ten Year Structural  
Warranty Limit : \$ 235,423.00

The address and legal description of the home which has been accepted for enrollment is:

6207 CANYON RUN CT  
KATY, TX 77450

24/1/4 CANYON GATE CINCO

The Home Buyers Warranty Limited Warranty Booklet enclosed is dated 10/1/99

The Builder Application for Home Enrollment that you signed with your Builder prior to your home being enrolled in the HBW program, this Certificate of Warranty Coverage and the enclosed Home Buyers Warranty Limited Warranty Booklet make up your warranty contract. This is the complete agreement among us. There are no oral or written agreements or representations directly or indirectly connected with this agreement except these three documents. No party will be bound by any other representations or agreements made by any persons.

**Notice:** A reproduction of this Certificate of Warranty Coverage is not acceptable proof of warranty coverage. Any modifications, alterations or revisions made to this document will void the warranty coverage.

Exhibit 7

HBW 320 8/1/88

WHITE-HOMEBUYER(S) CANARY-HBW DISTRICT PINE-BUILDER



THIS DOCUMENT IS NOT YOUR NEW HOME WARRANTY BUILDER APPLICATION FOR HOME ENROLLMENT

Mail To: Home Buyers Warranty 1417 W. Arkansas Lane Arlington, TX 76013-6271 (800) 488-8844

The undersigned Builder-Member of the Home Buyers Warranty (HBW) New Home Warranty Program makes application for enrollment of the home whose address is listed below. The Builder-Member is responsible for completion of all enrollment requirements on the home. If all enrollment requirements are not completed on the new home, this Application will be denied and no warranty will be issued. The Builder must send or have his closing agent send the original of this Application for Home Enrollment and a check for full payment to HBW. If the Builder-Member has satisfied all the enrollment requirements and HBW has received this Application and full payment within 15 days of the date of closing on the home, the Homebuyer will receive the Certificate of Warranty Coverage and Warranty Booklet within 30 days of closing from HBW. IF THE HOMEBUYER HAS NOT RECEIVED THE CERTIFICATE OF WARRANTY COVERAGE AND WARRANTY BOOKLET FROM HBW WITHIN THIRTY (30) DAYS AFTER CLOSING, THEN NO WARRANTY EXISTS ON THE HOME AT THIS ADDRESS.

IT IS UNLAWFUL TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF FRAUDULATING OR ATTEMPTING TO FRAUD THE COMPANY. PENALTIES MAY INCLUDE IMPRISONMENT, FINES, DENIAL OF INSURANCE, AND CIVIL DAMAGES. ANY INSURANCE COMPANY OR AGENT OF AN INSURANCE COMPANY WHO KNOWINGLY PROVIDES FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO A POLICYHOLDER (BUILDER OR CLAIMANT (HOMEBUYER)) FOR THE PURPOSE OF FRAUDULATING OR ATTEMPTING TO FRAUD THE POLICYHOLDER (BUILDER OR CLAIMANT (HOMEBUYER)) WITH REGARD TO A SETTLEMENT OR AWARD PAYABLE FROM INSURANCE PROCEEDS SHALL BE REPORTED TO THE INSURANCE COMMISSIONER OF YOUR STATE.

PLEASE PRINT OR TYPE

- 1. Homebuyer(s): Amy L. Weaver (Name(s) as recorded on deed)
Address of Home: 6207 Canyon Run Ct. Katy, TX 77449
2. Builder Name: Royce Homes HBW Builder No:
3. Effective Date of Warranty: Date of closing 3/3/00 Date of earlier first occupancy
4. COVERAGE: Both the Builder and Homebuyer(s) must check and initial which of the following coverages apply to the unit being enrolled.
5. Single Family Detached, Townhome, Manufactured, Modular, Condominium
6. Type Financing (Check one): FmHA, VA, FmHA, Conventional, Cash
7. Rate Formula for Ten Year Only or One, Two and Ten Year Coverage:

235,423.00 + 1,000 = 236,423.00 x 1.5 = 354,634.50 x 1.25 = 443,293.125
If applicable add: \$30.00 + Final Sales Price x \$1.00 per \$1,000 for condo wood stairs & landings coverage + CO Basement Slab Coverage + Any additional fee - 50.00 = Total Warranty Fee Due

B. Check this box if an addendum has been issued by Builder and attach a copy where items of material or work were not provided by Builder and are excluded from the warranty.

Builder's Authorized Signature Date

HOME BUYERS ACKNOWLEDGEMENT AND CONSENT

Your Builder is applying to enroll your home in the HBW insured warranty program. By signing below, you acknowledge that you have viewed and received a video of "Warranty Teamwork: You, Your Builder & HBW", you have read the Builder's Copy of the Warranty Booklet, and CONSENT TO THE TERMS OF THESE DOCUMENTS INCLUDING THE BINDING ARBITRATION PROVISION contained therein. You further understand that when the warranty is issued on your new home, it is an Express Limited Warranty and that all claims and liabilities are limited to and by the terms and conditions of the Express Limited Warranty as stated in the HBW Warranty Booklet. IF YOU, THE HOMEBUYER(S) HAVE NOT RECEIVED A CERTIFICATE OF WARRANTY COVERAGE AND A WARRANTY BOOKLET FROM HBW WITHIN THIRTY (30) DAYS AFTER CLOSING, THEN NO WARRANTY EXISTS ON THE HOME AT THIS ADDRESS.

Homebuyer: [Signature] Date: 3-3-2000

OFFICE USE ONLY Accounting:

Exhibit 8



**Construction Arbitration Services, Inc.**

July 17, 2002

Mr. Craig Chick  
Texas House of Representatives Committee on Civil Practices  
P.O. Box 2910  
Austin, Texas 78768

Dear Mr. Chick:

It was a pleasure speaking with you this morning. I am enclosing the information we discussed.

I wanted to recap that Construction Arbitration Services, Inc. ("CAS") is a Texas Business Corporation engaged in the business of impartial administration of alternate dispute resolution, particularly arbitration. Since its inception CAS has been written into a number of home warranty documents. We currently administer arbitrations in all 50 States for approximately six warranty companies.

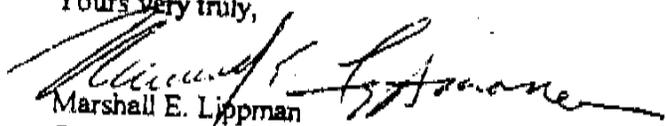
CAS is an independent administrator. It is a privately held corporation. The incorporators are both former executives with the American Arbitration Association. A third person who, together with the incorporators, makes up the Board of Directors is a former Federal Mediator (FMCS). No contractor, insurance or warranty company invested in the company and no representative of such an organization has any involvement with it.

Our experience is that all parties benefit from our process in that it offers a prompt, fair and inexpensive tribunal where the decision-maker (arbitrator) uses valuable technical knowledge in rendering a decision.

The CAS national panel consists of several hundred neutrals most of whom have over 10 years of arbitration experience. These panel members are independent of CAS and not employees. Most have been trained in arbitration procedure by our Company.

Please feel free to contact me if there is any other or further information you require.

Yours very truly,

  
Marshall E. Lippman  
General Counsel

closures

**Confidential**

Exhibit 9

2777 Stemmons Freeway • Suite 1452 • Dallas, Texas 75207 • (214) 638-2700 • Fax (214) 638-4054