

IN THE SUPREME COURT FOR THE STATE OF ALASKA

DAVID S. HAEG )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 BRENT R. COLE, )  
 )  
 Appellee )

Supreme Court No.: S-12771  
Trial Court Case No.: 3KN-06-844 CI

AK Bar Case No.: 2006F007

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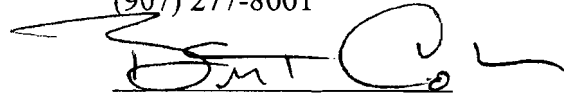
APPEAL FROM THE SUPERIOR COURT  
THIRD JUDICIAL DISTRICT AT KENAI  
THE HONORABLE HAROLD BROWN PRESIDING

From a final judgment of the Alaska Bar Association  
Fee Arbitration Panel  
Third Judicial District at Anchorage  
Nancy Shaw, Panel Chair/Attorney  
Yale Metzger, Attorney  
Robyn Johnson, Public Member

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BRIEF OF APPELLEE

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Statutes

AS.08.54.605 Eligibility for licenses.

(a) Notwithstanding AS 08.54.610, 08.54.620, 08.54.630, 08.54.650, and 08.54.660, a person may not receive or renew a registered guide license, master guide license, class-A assistant guide license, assistant guide license, or transporter license if

(1) the person has been convicted of

(A) a violation of a state hunting, guiding, or transportation services statute or regulation within the last five years for which the person was fined more than \$1,000 or imprisoned for more than five days;

(B) a felony within the last five years; or

(C) a felony offense against the person under AS 11.41 within the last 10 years;

AS.08.54.720 Unlawful acts.

(a) It is unlawful for a

(1) person who is licensed under this chapter to knowingly fail to promptly report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 20 days, a violation of a state game, guiding, or transportation services statute or regulation that the person reasonably believes was committed by a client or an employee of the person;

(2) person who is licensed under this chapter to intentionally obstruct or hinder or attempt to obstruct or hinder lawful hunting engaged in by a person who is not a client of the person;

(3) class-A assistant guide or an assistant guide to knowingly guide a hunt except while employed and supervised by a registered guide;

(4) person who holds any class of guide license to knowingly enter or remain on private land without prior authorization during the course of providing big game hunting services;

(5) registered guide to knowingly engage in providing big game hunting services outside of

(A) a game management unit for which the registered guide is certified;

or

(B) a use area for which the registered guide is registered under AS 08.54.750 unless the registration requirement for the area has been suspended by the Department of Fish and Game;

(6) person to knowingly guide without having a current registered guide, class-A assistant guide, or assistant guide license and hunting license in actual possession;

(7) registered guide to knowingly fail to comply with AS 08.54.610(e);

(8) person who is licensed under this chapter to knowingly

(A) commit or aid in the commission of a violation of this chapter, a regulation adopted under this chapter, or a state game statute or regulation; or

(B) permit the commission of a violation of this chapter, a regulation adopted under this chapter, or a state game statute or regulation that the person knows or reasonably believes is being or will be committed without

(i) attempting to prevent it, short of using force; and

(ii) reporting the violation;

(9) person without a current registered guide license to knowingly guide, advertise as a registered guide, or represent to be a registered guide;

(10) person without a current master guide license to knowingly advertise as, or represent to be, a master guide;

(11) person without a current registered guide license to knowingly outfit a big game hunt, advertise as an outfitter of big game hunts, or represent to be an outfitter of big game hunts;

## INTRODUCTION

This is an appeal by Haeg from a superior court “Memorandum Decision and Order” (“Order”) affirming an adverse fee arbitration award. The fee arbitration hearing panel ruled against Haeg after a three day hearing held in accordance with Bar Rule 40. Haeg, as a pro per appellant, has filed an eighty-six page brief which makes numerous allegations not relevant to an appeal of a superior court decision affirming a fee arbitration award.

In an appeal of an arbitration award, factual determinations cannot be appealed or reviewed by the appellate court. *A. Fried Miller, Attorney at Law v. Purvis*, 921 P.2d 610, 617 (Alaska 1996); See also AS 09.43.120 and AS 09.43.130. These authorities set forth strict limitations regarding the limits of an appeal from a decision by an arbitration panel. The superior court’s Order adhered to the proper standard of review on appeal and denied Haeg’s attempts to re-litigate his criminal conviction and question the findings of fact made by the arbitration panel. Haeg’s brief either ignores the required legal analysis for appellate reviews of fee arbitration decisions, inadequately briefs issues he raises, raises new issues on appeal, or fails to provide any evidence in support of his arguments.

Haeg’s brief has not raised any new arguments requiring the reversal of the superior court Order. This Court should reject Haeg’s arguments and affirm the superior court Order.



## STATEMENT OF THE CASE

Haeg violated a number of fish and game laws by being involved in shooting at and killing nine wolves from an aircraft outside an area where he had been given a permit to conduct such hunts. [Tr. 61-62]. [Exc. 750 and 767] At the time, Haeg was a registered guide in Alaska and his shooter, Tony Zellers, was a registered assistant guide. [Tr. 99]. After killing the wolves, Haeg took some of the carcasses to his lodge located in the area. While flying in the area, Trooper Gibbens came across this kill zone. He landed and during the course of the investigation, found unique ski tracks in the snow consistent with Haeg's aircraft. Haeg and Zellers had met with Trooper Gibbens earlier in the month and he observed this unique ski track in McGrath. Additionally, Trooper Gibbens found particular shells which were consistent with rounds Zellers told him they intended to use when they went aerial wolf hunting. [Exc. 750, 767, 789 and 793] [Tr. 43].

The Troopers served a search warrant on Haeg's lodge and found several wolf carcasses. [Exc. 789 and 793]. They then served search warrants on Haeg's home and for his aircraft. The Troopers seized Haeg's aircraft. [Tr. 121]. The Troopers also found evidence that Haeg and/or Zellers falsified wolf sealing records indicating how and where they killed their wolves. [Tr. 80-81, 196].

As a registered guide, Haeg was subject to the provisions of AS 08.54.605. [Tr. 234]. At the time, this statute required the Division of Occupation Licenses to refuse to grant a license for five years to any guide who was convicted of violating a state hunting

statute or regulation and receiving a jail sentence of more than five days or a fine of \$1,000. AS 08.54.605(a)(1). He was also subject to AS 08.54.720 which prescribes penalties for guides who commit specific game violations. Specifically, he was subject to the provisions of AS 08.54.720 (a)(1), (8), and (15). Any conviction under AS 08.54.720(a)(8) carried a minimum one year license suspension under AS 08.54.720(e), while any conviction of AS 08.54.720(a)(15) subjected Haeg to a minimum three year license suspension under AS 08.54.720 (f).

Haeg hired Cole on or about April 9, 2004. [Tr. 41]. Haeg signed a written plea agreement agreeing to pay Cole \$200.00 per hour to represent him in dealing with the criminal investigation. [Exc. 783]. At the time he hired Cole, he had not been charged with any crimes and his spring bear hunting season was fast approaching. [Tr. 243]. He repeatedly informed Cole that he had worked for many years to establish his business and could not lose his guide license for five years because of these violations of Alaska's hunting laws. [Tr. 45-46, 99, 236, 239, 299]. He was told by Cole from the beginning that he should expect that the aircraft used in illegally killing wolves would be forfeited and that he was likely going to lose his license to guide for a period of time. [Tr. 46, 50, 99, 100, 237, 251]. He was also told that in all likelihood, if he challenged the State's case, pled not guilty, and lost, the Court would impose a sentence of greater than five days or \$1000 fine. [Tr. 239]. This would cause him to lose his right to apply for his guide license for at least five years under AS 08.54.605. He was repeatedly told that he should avoid any situation that would lead to "open" sentencing because of this

concern. [Tr. 55, 257-8, 261, 299, 322].

In order to avoid potential felony charges, and the cancellation of his spring bear hunts, which were weeks away, and to demonstrate that he was interested in an amicable resolution of his case which would limit any license revocation, Haeg was advised to, and agreed, to give a full statement detailing his involvement in these illegal activities. Haeg agreed and prior to giving his statement, noted five other wolves that were killed from his aircraft outside the permit area through a map which was forwarded to law enforcement. He then gave an in depth interview with Trooper Gibbens and Scott Leaders the assistant district attorney assigned to handle the case. [TR. 16, 249]. The interview was taped, but the equipment must have malfunctioned because the State never produced an understandable recording of this interview. [Tr. 18, 272]. Zellers likewise agreed to cooperate and gave a full tape recorded statement outlining both persons' criminal involvement in these violations. [Tr. 18, 75-76]. Cole later confirmed in a letter to Leaders that this statement could not be used against Haeg. [Exc. 747].

Cole represented Haeg throughout the summer and into the fall. This representation included ongoing review of discovery, continued negotiation of a possible plea agreement, and counseling on future guiding actions. [Tr. 253]. Cole sent a monthly bill to Haeg reflecting his time in the case. In August through October, the parties discussed a number of different scenarios to resolve this case. [Tr. 254-63].

On November 4, 2004, the State filed an Information and requested an

arraignment/change of plea/sentencing which was scheduled for November 9, 2004 in McGrath. [Exc. 750]. On November 8, 2004, the State filed an Amended Information. [Exc. 767]. Both Informations set forth Haeg and Zellers' total criminal activity based upon their individual statements to law enforcement and the investigation conducted by law enforcement. Prior to the arraignment/sentencing, and on the evening of November 8, 2004, the parties reached an understanding on all the terms of a sentence that would be imposed on Haeg. Because further approval was needed by an administrative agency, the parties cancelled the change of plea/sentencing portion of the hearing. [Tr. 58, 269]. Haeg pled not guilty the next day preserving all of his rights to contest this matter. [Tr. 270].

Settlement efforts thereafter were unsuccessful, primarily because Haeg refused to enter any plea agreement which required the forfeiture of his aircraft. [Tr. 72, 105-106, 273]. He thereafter fired Cole and hired Mr. Chuck Robinson who represented Haeg through the pre-trial, trial, and sentencing stage of these proceedings. [Tr. 59, 90, 128]. Haeg refused to pay the remainder of Cole's bill.

Zellers ultimately pled no contest and agreed to testify against Haeg at Haeg's trial. [Tr. 68, 83]. Zellers' testimony independently recounted the criminal activity of both individuals. [Tr. 68, 83]. It is unclear whether Haeg's statement was used in the State's case in chief. [Tr. 68]. Haeg, through his attorney, could have filed motions to dismiss charges, motions to suppress evidence seized in the course of the search warrants, and motions to suppress the use of his statement to law enforcement at trial.

[Tr. 281]. Haeg requested Robinson file a motion to enforce a Criminal Rule (“CR”) 11 agreement but Robinson stated he could not do so. [Tr. 170]. As predicted, Haeg was convicted on numerous violations of criminal law which subjected him to “open” sentencing by the trial judge. [Tr. 279].

Haeg subpoenaed Cole to his sentencing hearing. [Tr. 287]. Cole contacted Robinson and informed him that calling him as a witness would waive the attorney-client privilege and that Cole’s testimony could be very detrimental to Haeg’s case and ultimate sentence. [Tr. 286-7] Robinson agreed. [Tr. 287]. Cole indicated he was available telephonically to testify if necessary. Robinson agreed to this arrangement. Cole was not called to testify telephonically at Haeg’s sentencing. [Tr. 287].

Haeg has since filed grievances with the Bar against Cole, grievances against the sentencing judge, and accused Trooper Gibbens of committing perjury at his trial. [Tr. 40, 53, 68]. In this case, he has again requested Cole be referred to criminal authorities and the Alaska Bar Association.<sup>1</sup> He also sought referral of two of the sitting fee arbitration panel members in this case for “corruption, bias, partiality, collusion, and conspiracy” without any real proof other than they signed an opinion that rejected his arguments. His actions and words at the fee arbitration hearing resulted in panel members expressing concern about their safety. [Tr. 208]. Haeg claims conspiracies abound to deprive him of his right to be a guide in Alaska, causing he and his family to suffer innumerable financial and emotional hardships, although he has admitted that

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<sup>1</sup> The Alaska Bar Association in a letter dated September 7, 2007, rejected Mr. Haeg’s most recent accusations against Cole. This Court recently rejected Haeg’s appeal of this decision. [Exc. 819]

while a guide, he knowingly and intentionally violated Alaska's game laws by shooting nine wolves from an airplane without legal authority. These violations of the law subjected Haeg to significant possible criminal penalties which were ultimately imposed.

At the fee arbitration hearing, Haeg did not challenge that he entered into a written fee agreement with Cole. [Tr. 41]. Haeg did not challenge that he agreed to pay \$200/hour for services Cole rendered as his attorney. Haeg did not challenge the time sheets submitted showing the time Cole spent representing him on the case. [Tr. 48]. He only challenged one travel expense for travel to McGrath which Cole acknowledged was a clerical error and should be adjusted. [Tr. 232]. Finally, Haeg acknowledged that he refused to pay the remaining balance on Cole's bill which amounted to \$2,059.19. Rather, Haeg argued, and the parties sat through a three day hearing considering, whether Cole's representation of Haeg was so deficient, that he breached his ethical duty of loyalty to Haeg requiring the reimbursement of all fees paid to Cole. [Tr. 93, 295-6].

The fee arbitration award unanimously rejected Haeg's arguments in a clear and succinct written decision. [Exc. 797.] The fee arbitration panel instead awarded Cole an amount that was earned but not paid less the clerical error for the travel expense. Unfortunately, the panel made a clerical error and awarded Cole \$1,000 more than he was entitled to receive under the terms of his contract with Haeg.

Haeg then appealed this decision to the superior court. After full briefing and

oral arguments, the superior court handed down its Order on June 5, 2007, affirming the decision of the fee arbitration board in all respects except for the award amount. The superior court found a clerical error in the fee arbitration award and reduced it under authority of AS 09.43.130(a)(1). The Superior Court noted this appeal was not to re-argue the merits of the criminal conviction or to re-litigate the weight of the testimony or the credibility of the witnesses. [Exc. 801 at 3,4,5] The Superior Court found no evidence of the arbitration award was procured by fraud or undue means. [Exc. 801 at 5-6] This appeal has followed. [Exc. 801 at 7]

#### **STANDARD OF REVIEW ON APPEAL**

The Supreme Court reviews a superior court's decision to affirm an arbitration award de novo, but "[t]he arbitrator's findings of both fact and law... receive great deference..." *Kinn v. Alaska Sales & Servi., Inc.*, 144 P.2d 474, 482 (Alaska 2006). As a matter of both policy and law, the court is generally "loathe to vacate an award made by an arbitrator." *Department of Pub. Safety v. Public Safety Employees Ass'n*, 732 P.2d 1090, 1093 (Alaska 1987). The Supreme Court has previously held that "the arbitrator's finds of fact are unreviewable, even in the case of gross error." *Ahtna, Inc. v. Ebasco Constructors, Inc.*, 894 P.2d 657, 661 (Alaska 1995).

The proper standard of review of an arbitration award depends on the basis of the arbitration. For arbitrations conducted pursuant to the Alaska Uniform Arbitration Act, the standard of review is highly deferential. *Breeze v. Sims*, 778 P.2d 215, 217 (Alaska 1989). An Alaska Bar Association fee arbitration dispute incorporates provisions of the

the Uniform Arbitration Act. *Alaska Bar Rule 40(a)(2)*. Factual determinations made by the fee arbitration panel are not subject to review. *See e.g. Breeze v. Sims, 778 P.2d 215 (Alaska 1989)* (“Whether there was a fee limit, and whether that limit was exceeded were questions for the arbitration panel to decide. These finding are not subject to judicial review even if the factual determinations were grossly in error.”); *A. Fred Miller, Attorneys at Law, P.C., v. Purvis, 921 P.2d 610, 617 (Alaska 1996)* (“We reaffirm, therefore, that appeals on the merits from Panel decisions will not be allowed.”) Both statutory restrictions and Alaska case law clearly limit the right of either an attorney or a dissatisfied client from appealing an adverse ruling by a fee arbitration panel. *Id.*, at 616. (“Finally, we find unpersuasive the position of petitioner and the Association that the unappealability of Committee determinations is unfair to lawyers. If that is unfair, it is at least equally unfair, for the client similarly has no appellate right.”) *Id.*, at 616 In short, appeals on the merits from Committee Decisions will not be allowed. *Id.*, at 617.

## LEGAL ARGUMENTS

### 1. SUMMARY

In order to address the numerous issues raised in Haeg’s brief, it is important to put this case in its proper context. Haeg filed for fee arbitration claiming that Cole’s representation of him was valueless because Cole violated fundamental ethical tenants including not properly advising him on certain matters, having a conflict of interest in representing Haeg, and not contesting actions taken by the assistant district attorney



prosecuting the case. Cole responded to each and every allegation propounded by Haeg in a three day hearing, denying any ethical violations or conflicts and noting that Haeg fired Cole shortly after the charges were filed and hired a new attorney who could have, but never did, contest any of the State of Alaska's legal maneuverings.

At the end of fee arbitration hearing, the panel ruled unanimously against Haeg on all points and in favor of Cole. Haeg appealed this decision raising similar issues before the superior court. The superior court followed statutory requirements and case law and concluded that there were no grounds for vacating the award of the fee arbitration panel. It is important to note in this appeal that Haeg has not argued that the superior court applied the incorrect standard of review or law in its Order. Haeg's brief before this Court is essentially another attempt to resurrect arguments he made before the fee arbitration panel. In his brief, he broadly characterizes all of his complaints as "fraud" because of his personal frustration with our justice system and because he now recognizes that this is his only available avenue for appealing the decision of the panel.

His arguments can be summarized as follows: the fee arbitration panel's award was procured by fraud (Haeg brief at 25) because Cole and Kevin Fitzgerald, the attorney representing co-defendant Zellers, committed perjury before the fee arbitration panel by testifying that Haeg and Zellers had immunity agreements with regard to their statements given to law enforcement. (Haeg brief at 25-28). Haeg also argues that the fee arbitration panel erred in failing to determine that Cole breached his duty of and advocacy and loyalty to Haeg by not enforcing a Criminal Rule 11 agreement (Haeg's

brief 28-36); by not moving to suppress the search warrants (Haeg's brief at 37-38); and by not advising him about getting back his aircraft (Haeg's brief at 38-59). Haeg then argues that the fee arbitration panel was corrupt citing references to the panel's written decision that he disagrees with (Haeg's brief at 59-61); that there was partiality exhibited by the arbitrators at the hearing; (Haeg's brief at 61); that the arbitrators exceeded their powers (Haeg's brief at 61-62); that the arbitrators did not address issues presented by Haeg at the hearing (Haeg's brief at 61-63); that the arbitrators did not refer this matter to discipline counsel (Haeg's brief at 63); that the arbitrators' decision was not supported by the evidence (Haeg's brief at 64); that the arbitrators' decision was not conducted in accordance with Alaska Bar rule 40(q). Finally, Haeg argues that the superior court's decision exhibited bias, partiality, and corruption. (Haeg's brief at 65-74) and in was rendered in violation of the United States and Alaska Constitutions. (Haeg's brief at 74-75).

Haeg's brief is devoid of any specific evidence of fraud or undue means. Haeg's arguments from pp 23-75 are simply an attempt to appeal and re-litigate the factual determinations made, or not made as the case may be, by the fee arbitration panel. These factual determinations are not appealable. The remaining arguments regarding the corruption of the panel members are simply disguised arguments for Haeg's disagreement with the written decision, without any proof of fraud or corruption as required under case law. Additionally, Haeg has raised new issues on appeal which were not raised below. Finally, Haeg has failed to adequately brief issues. There is no

legal basis for overturning either the superior court's decision or the fee arbitration award.

## 2. ANALYSIS

### A. Haeg Failed to Sustain His Burden of Proving that the Panel's Decision was Procured by Fraud or Undue Means.

Haeg first argues that Cole and Fitzgerald committed perjury by testifying that he and Zellers had immunity agreements before giving statements to the prosecution. In fact at the arbitration hearing, both Cole and Fitzgerald testified that it was their understanding that Haeg and Zellers each had "king for a day" immunity. [Tr. At 249, 252, 283, 181]. Cole wrote a letter to Leaders, the prosecutor, to this effect at the request of Mr. Robinson, Haeg's new attorney. [Exc. 747]. It is unclear from Haeg's brief why he does not believe the State agreed with Cole's assertions in the letter to Leaders.

Haeg complains that Cole did not move to suppress his statements, but Haeg fired Cole and hired Robinson to represent him. Haeg has never disclosed whether his statement to law enforcement was used against him at his criminal trial<sup>2</sup>, but if it was, Robinson, as Haeg's trial attorney, is the only person who could have moved to suppress the use of the statement, not Cole. After the negotiations between Haeg and the State fell apart, Haeg fired Cole and hired Robinson. Cole could not file any motions after he was fired. However, both Fitzgerald and Cole believed that Leaders

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<sup>2</sup> Haeg does admit that the State "relied almost entirely on Zellers (sic) testimony against David at David's trial..." Haeg's brief at 28.

made a deal with Zellers after Haeg's negotiations broke down so the State would be able to use Zellers' testimony against Haeg to prove all the criminal charges without reference to Haeg's statement. [Tr. At 187, 285]. Obviously, Haeg's limited immunity did not insulate him from his co-defendant's cooperation with the State at trial through his testimony.

Haeg's argument fails to demonstrate that either Cole or Fitzgerald perjured themselves in testifying about their understanding of the limited protection their client's received by cooperating with law enforcement officers and giving a voluntary statement in return for leniency. Their testimony was confirmed later in the letter from Cole to Leaders. There is no basis for finding that this testimony constituted "fraud". This is simply another attempt to undermine the factual findings of the fee arbitration panel. This determination cannot be appealed since it is based on a factual determination found against Haeg and in favor of Cole. *A. Fred Miller, Attorneys at Law, P.C., v Purvis, 921 P.2d 610, 617 (Alaska 1996)* ("We reaffirm, therefore, that appeals on the merits from Panel decisions will not be allowed.") For these reasons, Haeg's argument must be rejected.

Additionally, a party that contends that an arbitration award was procured by fraud or any other undue means must specifically set forth evidence to support this claim other than simple disagreement with the factual determinations that were made. This point has been reaffirmed by the Alaska Supreme Court on several occasions. For instance in *Alaska State Housing Authority v. Riley Pleas, Inc., 586 P.2d 1244, 1247-8*

(Alaska 1978), the Court noted:

ASHA's next claim of error is that several items of the award were procured by fraud and undue means which are statutory grounds for vacating an award under AS 09.43.120 (a)(1). In reviewing this aspect of ASHA's appeal, it is evident that the essence of its claim is that the arbitrators made gross errors in determining the facts. ASHA, however, cites no authority for its contention that the "fraud or other undue means" standard of the statute authorizes review for gross errors. We hold that it does not.

There is a substantial difference between procurement of an award by fraud or other undue means and an award in which the arbitrators have allegedly made large mistakes. The former instances connote affirmative wrongdoing by a party to the arbitration and often by an arbitrator; gross error carries no such connotation. Moreover, fraud or undue means in the procurement of an award does not require a review on the merits of the controversy; a review for gross errors is a review on the merits.

Later, the Supreme Court reiterated this standard in Law Offices of Vincent Vitalle, P.C. v. Tabbytite, 942 P.2d 1141, 11147 (Alaska 1997).

Tabbytite's argument in her brief on appeal is an almost verbatim reproduction of the argument she made in opposition to the motion to confirm the award before the trial court. No instance of fraud is specified in this argument. Fraud, in fact, is not mentioned. Fraud, even in an initial pleading, must be averred with particularity. Alaska R. Civ. P. 9(b). It follows that a confirmation award may not be resisted merely by reciting without specificity that fraud existed. Further, at the motion stage, evidentiary support for particular fraud claims must be presented. See, e.g., Alaska R. Civ. P. 56(c); McHugh v. Church, 583 P.2d 210, 217 (Alaska 1978). We conclude therefore that Tabbytite did not present a legally sufficient claim of fraud as a defense to the motion to confirm.

Haeg's allegations do not amount to proof of fraud. Proof of fraud requires

evidence of a false representation of fact, scienter, intention to induce reliance, justifiable reliance, and damages. *Barber v. National Bank of Alaska*, 815 P.2d 857, 862 (Alaska 1991). Haeg has not demonstrated that Cole or Fitzgerald knowingly misrepresented any fact to the panel or that such misrepresentations were instrumental in obtaining the panel's decision. Haeg presented no evidence that his statement to law enforcement was not what Cole represented it to be. As noted by the superior court on several occasions, just because the panel ruled chose Cole's version of events over Haeg's version in light of Haeg's perception of the overwhelming evidence, does not mean that the panel was corrupt or bias or that Cole's testimony was untruthful. As this Court is well aware, perjury is not simply a misstatement or an incorrect statement. People can and do see and hear things differently as well as remember matters differently. Having a different recollection does not make a statement a lie. Haeg's allegation of fraud and perjury on this issue are without merit and were rejected by the arbitration panel and the superior court. This Court should similarly reject these unfounded and unsupported arguments.

**B. Haeg's Arguments Regarding the Enforcement of a Sentencing Deal Do Not Constitute Fraud.**

Haeg's next argument alleges that Cole did not properly advise Haeg about or enforce a plea agreement between the parties. (Haeg's brief at 28.) Haeg raised these same issues before the fee arbitration panel at the hearing. This argument formed the basis for his request that this should be referred to Discipline Counsel. The fee arbitration panel and the Alaska Bar Association have rejected this contention. [Exc.

808].

This issue was the subject of much discussion and dispute during the fee arbitration hearing. Cole testified at the hearing that he did not want to file this motion because he was not convinced there was an enforceable agreement and more importantly, the filing of this motion could only harm Haeg. [Tr. at 268, 277]. Additionally, Cole testified that Robinson, not Cole was the person to file this motion and for reasons unknown, no such motion was ever filed. [Tr. at 281]. In rejecting Haeg's arguments, the fee arbitration panel noted that no motions were filed by Haeg's new attorney and it was unlikely success would have placed Haeg in a better position. [Exc. 797]

This decision cannot be appealed since it is based on a factual determination found against Haeg and in favor of Cole. A. Fred Miller, Attorneys at Law, P.C., v. Purvis, 921 P.2d 610, 617 (Alaska 1996) ("We reaffirm, therefore, that appeals on the merits from Panel decisions will not be allowed.") Whether there was a meeting of the minds before November 8, 2004, and what the terms and conditions were, if any, were all factual determinations that were addressed at the fee arbitration hearing. Cole explained his reluctance to file the motion and ultimately Haeg fired Cole. [Tr. 268, 275]. At that point, Haeg had the opportunity to have Robinson file the motion to enforce the alleged plea agreement. No action by Cole precluded Robinson from filing the motion to enforce on behalf of Haeg. Additionally none of the testimony on this point could possibly constitute "fraud" as required by the statute. Therefore, none of

these determinations can be appealed.

Simply put, there was support in the record for the findings on this issued by the Written Decision. The superior court's decision correctly noted that simply because Haeg disagreed with the conclusions of the fee arbitration panel, this does not constitute fraud, bias or corruption. [Exc. 801 at 3]. For these reasons, Haeg's argument must be rejected.

**C. Haeg's Arguments Regarding the Return of His Seized Property are Legally Incorrect and Do Not Constitute Fraud.**

Haeg next argues "perjury or fraud" by Cole because he claims he was not properly advised he had a right to recover his seized aircraft which breached a duty of loyalty and advocacy. Haeg argued this point before the fee arbitration panel and their decision expressly rejected it by noting that the panel was "presented no other evidence to support a finding that Mr. Cole's representation of Mr. Haeg was so deficient that no fee is due" and the panel "finds no basis for referral to discipline counsel." [Exc. 797 at 4]. This decision cannot be appealed since it is based on a factual determination found against Haeg and in favor of Cole. *A. Fred Miller, Attorneys at Law, P.C., v Purvis*, 921 P.2d 610, 617 (Alaska 1996).

Additionally, this argument is not legally correct. AS 16.05.190 and AS 16.05.195 allow the seizure and forfeiture of any aircraft used in or in aid of a violation of this chapter or regulation upon the conviction of the offender of a violation of Alaska's fish and game laws or guiding laws. AS 12.36.020 precludes the return of seized property if it is in custody in connection with an official investigation of a crime



or is subject to the forfeiture laws of the state. Haeg was not precluded from engaging in his livelihood after the forfeiture of his aircraft as he was able to demonstrate by conducting his 2004 spring bear hunts with his other aircraft. [Tr. at 243]. Additionally, by contesting the seizure of his aircraft, he would have lost his ability to negotiate a lesser loss of his guide license which he was facing.

Simply put, there was support in the record for the findings on this issued by the Written Decision. For these reasons, Haeg's argument must be rejected.

**D. There is No Proof That the Fee Arbitration Panel Was Biased or Corrupt.**

Next, Haeg alleges corruption on the part of the fee arbitration panel. Haeg Brief at 59-60. A review of the basis for these claims is simply that he disagrees with the written decision issued by the panel. His argument is again without merit and should be denied.

First, Haeg claims that the written order failed to address the issues presented. While the panel did not specifically address every issue raised by Haeg during the course of the hearing, it did address all his issues in its decision by noting that the panel was "presented no other evidence to support a finding that Mr. Cole's representation of Mr. Haeg was so deficient that no fee is due" and the panel "finds no basis for referral to discipline counsel." [Exc. 797 at 4]. Haeg raised a multitude of issues during the course of the hearing. There was no need to address each and everyone because it was hard to keep track of what Haeg was arguing during the hearing. Haeg had the burden of proving his case. The arbitration panel obviously found that he did not carry his

burden. This determination cannot be overturned on appeal.

Next Haeg offers statements by the panel that he claims are false statements. He provides no support for these arguments from the record. An issue given only cursory treatment in a brief will be treated as abandoned. *Petersen v. Mut. Life Ins. Co.*, 803 P.2d 406, 410 (Alaska 1990); see also *State v. O'Neill Investigations, Inc.*, 609 P.2d 520, 528 (Alaska 1980) (“When, in the argument portion of a brief, a major point has been given no more than cursory statement, we will not consider it further. Failure to argue a point constitutes an abandonment of it.”) Haeg’s failure to provide support for these statements constitutes abandonment.

**E. There is No Proof of Partiality by the Fee Arbitration Panel.**

Again, Haeg offers examples by the panel that he claims constitute partiality by the panel. He provides no support for these arguments in his brief. An issue given only cursory treatment in a brief will be treated as abandoned. *Petersen v. Mut. Life Ins. Co.*, 803 P.2d 406, 410 (Alaska 1990); see also *State v. O'Neill Investigations, Inc.*, 609 P.2d 520, 528 (Alaska 1980). Haeg’s failure to provide any arguments for his allegations constitutes abandonment.

Additionally a fair reading of the transcript demonstrates that the panel was very fair to both parties. The only time the panel began setting time limits on the parties was after several days of testimony. Finally, Haeg never sets out how he was prejudiced by the time limit. This argument should likewise be rejected.

**F. The Arbiters Did Not Exceed Their Statutory Powers in Rendering Their Decision.**

Haeg argues the Arbitrators exceeded their powers by awarding Cole money despite the fact that Cole testified he did not want the money. Haeg's argument is misguided. By filing a petition for fee arbitration, Haeg put not only the fees he paid Cole at issue, but he also put at issue the fees he failed to pay. In this case he previously admitted not paying \$2,062.19 in his petition for arbitration for fee dispute. Haeg did not dispute the reasonableness of Cole's hourly rate or the amount of time charged for the legal services. [Exc. 797 at 1]. The panel received the billing statements into evidence and determined that Cole charged \$13,389.00 and Haeg only paid \$11,329.81, a difference of \$2,059.19. The panel noted, and Cole agreed, that this amount should be reduced by \$370 for a clerical error related to a flight expense. Thus Haeg owed Cole \$1689.19, or exactly \$1,000 less than the fee arbitration panel awarded.

The superior court agreed and noted that when the Haeg "pursued fee arbitration, his fee agreement with [Cole] became a proper matter for consideration." [Exc. 801 at p. 6]. Given Haeg's concessions that he was not contesting Cole's hours or fees charged, he can hardly now complain about the award against him when he admitted to refusing to pay Cole the amount he knew was owed. Simply put, when Haeg initiated this fee arbitration against Cole, he placed at issue his failure to pay which he dutifully acknowledged at the hearing. Nothing in the Bar Rules or in the hearing negated these facts. For this reason, the award as modified by the superior court should be affirmed.

Additionally, the fact that Cole waived or did not ask for the amount that Haeg

refused to pay does not evidence corruption or fraud, it simply evidences a determination of what was at issue between the parties at the fee arbitration hearing: whether Haeg was required to pay the fees he contracted with Cole to pay. The panel ruled against Haeg and in favor of Cole and determined that Haeg was required to pay the fees he contracted to pay. [Exc. 797]. Haeg arguments are without merit and should be rejected.

**G. Haeg Has Failed to Adequately Brief Numerous Sections of His Argument and This Constitutes Waiver of These Points on Appeal.**

From pp 62-65, Haeg makes a number of abbreviated and unsubstantiated arguments which cannot be the basis for vacating the superior court's Order. As noted above, there is limited review of fee arbitration awards by statute and case law. Haeg's arguments ignore the statute and case law and fail to adequately address his conclusory statements in a meaningful way. An issue given only cursory treatment in a brief will be treated as abandoned. *Petersen v. Mut. Life Ins. Co.*, 803 P.2d 406, 410 (Alaska 1990); see also *State v. O'Neill Investigations, Inc.*, 609 P.2d 520, 528 (Alaska 1980).

Haeg's failure to provide any arguments for his allegations constitutes abandonment.

These arguments include:

- \* Failure to Address Issues Presented at the Hearing.
- \* Failure to Refer Cole to the Discipline Counsel.
- \* Failure of the Panel's Decision to Comport with the Evidence.
- \* Failure to Comply with the Alaska Rules of Professional Conduct

or Fee Arbitration.

\* Missing Tapes of the Record.

Additionally, Haeg fails to address how any of these issues provide him the relief he seeks. These arguments must be rejected.

**H. There is No Proof of Biased Partiality or Corruption by the Superior Court Judge.**

Haeg fails to set forth any facts that support that the superior court judge exhibited bias, partiality, and corruption. Instead, from pp 65-74, Haeg simply uses this opportunity to attempt to discredit Cole's brief filed before the superior court. This argument does not address the fundamental issue on an appeal of an arbitration award of whether it was procured by fraud or undue means. Therefore this argument should be dismissed.

**I. Haeg Failed to Raise the Issue That the Panel's Decision Violated the United States and Alaska Constitutions and Failed to Adequately Brief This Issued.**

Haeg did not raise this issue in his brief before the superior court. Haeg's argument fails to adequately address his conclusory statements in a meaningful way. An issue given only cursory treatment in a brief will be treated as abandoned. Petersen v. Mut. Life Ins. Co., 803 P.2d 406, 410 (Alaska 1990); see also State v. O'Neill Investigations, Inc., 609 P.2d 520, 528 (Alaska 1980). Haeg's failure to provide any arguments for his allegations constitutes abandonment.

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## CONCLUSION

Haeg filed a petition for arbitration of fee dispute. When he did so, he placed the entire issue of fee payment before a fee arbitration panel and agreed to be bound by its decision with limited rights on appeal. The panel issued a decision which was supported by the record and within its powers with the exception of one clerical error. He appealed this decision to the superior court. The superior court's Order affirmed the panel's decision applying the proper standard of review and deference to fee arbitration decisions.

Haeg's appeal here is generally another attempt to overturn the factual determinations which were made against him by the fee arbitration panel. These factual determinations may not be appealed. There was no evidence of fraud or undue means presented in Haeg's brief. His argument is completely focused on his argument that the written decision contains gross errors. Case law and statutes mandate that these types of argument cannot be sustained on appeal and must be rejected. For these reasons, the decision of the superior court and fee arbitration panel should be affirmed.

DATED this 29<sup>th</sup> day of February, 2008, at Anchorage, Alaska.

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By: 

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