

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Lamon & Stern, Inc., John Q. Bahrenburg, Geoffrey A. Garbacz and James B. Robinson,  
Claimants v. Capstone Investments, Inc., Respondent

Case Number: 03-05719

Hearing Site: San Diego, California

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Nature of the Dispute: Member and Associated Persons v. Member

**REPRESENTATION OF PARTIES**

For Claimants:

Randall R. Rainer, Esq.  
Wollmuth Maher & Deutsch LLP  
New York, New York

For Respondent:

Andrew Serwin, Esq.  
Foley & Lardner, LLP  
San Diego, California

**CASE INFORMATION**

Statement of Claim filed: August 5, 2003

Amended Statement of Claim filed: October 23, 2003

Claimant Lamon & Stern, Inc.'s Uniform Submission Agreement signed: October 23, 2003

Claimant John Q. Bahrenburg's Uniform Submission Agreement signed: July 16, 2003

Claimant Geoffrey A. Garbacz's Uniform Submission Agreement signed: July 30, 2003

Claimant James B. Robinson's Uniform Submission Agreement signed: July 17, 2003

Statement of Answer filed by Respondent: September 30, 2003

Amended Statement of Answer filed by Respondent: November 25, 2003

### **CASE SUMMARY**

In their Initial and Amended Statement of Claim, Claimants alleged breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, and quantum meruit.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Initial and Amended Statements of Claim in their entirety and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In their Initial Statement of Claim, Claimants requested compensatory damages in an amount of not less than \$214,411.45, pre-award interest in an amount not less than \$134,801.77, post-award interest, restitution of the value of all performance by Claimants, and all benefits conferred upon Capstone by Claimants, penalties and sanctions based upon Capstone's violation of NASD rules, attorney's fees, and costs.

In their Amended Statement of Claim, Claimants requested that Capstone be ordered to fulfill its remaining contractual obligations owed to Claimants pursuant to the Agreement, compensatory damages in an amount not less than \$214,411.45, pre-award interest in an amount not less than \$145,356.74, post award interest, restitution of the value of all performance by Claimants, and all benefits conferred upon Capstone by Claimants, penalties and sanctions based on Capstone's violation of NASD rules, attorney's fees, and costs.

Respondent requested dismissal of the Claimants' Initial and Amended Statements of Claim in their entirety, and costs, including attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On December 19, 2003, Claimant James B. Robinson and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On January 5, 2004, Claimant Geoffrey A. Garbac and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On January 6, 2004, Claimant Lamon & Stern, Inc. and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On January 9, 2004, NASD Dispute Resolution received Claimant John Q. Bahrenburg and Claimants' counsel's signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waivers of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Respondent did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

At the hearing, the Panel denied all outstanding motions, including Respondent's Motion to Consolidate.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable to and shall pay Claimants \$120,000.00 in compensatory damages.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy.

The member firm Lamon & Stern, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,750.00
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

The member firm Capstone Investments, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,750.00
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: September 9, 2004 1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 2,250.00  
Pre-hearing conferences: March 23, 2004 1 session  
September 7, 2004 1 session

Four (4) Hearing sessions @ \$1,125.00/session = \$ 4,500.00  
Hearings: September 14, 2004 2 sessions  
September 15, 2004 2 sessions

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<b>Total Forum Fees</b>	<b>= \$ 7,200.00</b>
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1. The Panel assessed \$3,600.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$3,600.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,600.00
Total Fees	= \$ 3,900.00
Less payments	= \$(1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,475.00</b>

2. Claimant Lamon & Stern, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondent is charged with the following fees and costs:

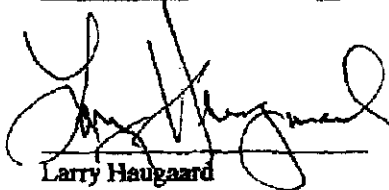
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,600.00
Total Fees	= \$ 8,800.00
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,600.00</b>

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Larry Haugaard	-	Non-Public Arbitrator, Presiding Chair
Gunnar Thowsen	-	Non-Public Arbitrator
Carl Van Winkle	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Larry Haugaard  
Chair, Non-Public Arbitrator

9-17-04  
Signature Date

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Gunnar Thowsen  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

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Carl Van Winkle  
Non-Public Arbitrator

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Signature Date

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Date of Service

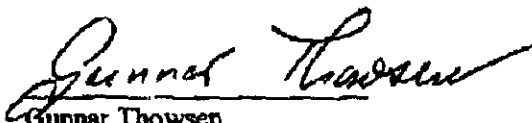
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Carl Van Winkle	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Chair, Non-Public Arbitrator

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Signature Date

  
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Gunnar Thowsen  
Non-Public Arbitrator

9/17/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Carl Van Winkle  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

9/17/04  
\_\_\_\_\_  
Date of Service

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Carl Van Winde	-	Non-Public Arbitrator

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Chair, Non-Public Arbitrator

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Signature Date

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Gunnar Thowsen  
Non-Public Arbitrator

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Signature Date



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Carl Van Winde  
Non-Public Arbitrator

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Signature Date

9/17/04

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Date of Service