

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

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In the Matter of the Arbitration Between:

Medical Assets LLC and David B. Arnold (Claimants) v. Emmett A. Larkin Company, Inc.  
(Respondent)

Case Number: 04-00920

Hearing Site: New York City, New York

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Nature of the Dispute: Customers v. Member

**REPRESENTATION OF PARTIES**

Claimants Medical Assets LLC ("Medical Assets") and David B. Arnold ("Arnold") hereinafter collectively referred to as "Claimants": James E. Nealon, Esq., Kelley Drye & Warren LLP, New York, NY.

Respondent Emmett A. Larkin Company, Inc. ("Respondent"): Ida Draim, Esq., Dickstein Shapiro Morin & Oshinsky LLP, Washington, D.C. Previously represented by Peter E. Root, Esq., Orrick, Herrington & Sutcliffe LLP, San Francisco, CA.

**CASE INFORMATION**

Statement of Claim filed on or about: February 11, 2004.

Medical Assets signed the Uniform Submission Agreement: February 9, 2004.

Arnold signed the Uniform Submission Agreement: February 9, 2004.

Statement of Answer filed by Respondent on or about: April 21, 2004.

Respondent signed the Uniform Submission Agreement: April 21, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: unauthorized transfer; breach of contract; replevin; negligence; and tort. The causes of action relate to a secured loan and CDIC stock.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimants requested compensatory damages in an amount not less than \$9,564,000.00; pre-judgment interest at 9% from the date of the cause of action until the date of the award; equitable

relief; attorneys' fees; forum fees; disbursements; costs; and such other further and different relief as the Panel deems just, equitable; and proper.

Respondent requested that the Statement of Claim be dismissed in its entirety with prejudice; costs; reasonable attorneys' fees; and such other and further relief as may be just and proper.

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

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

The parties have agreed to pay the arbitrators the regular hearing honoraria for the two days of deliberations held by the Panel on December 15, 2005 and January 5, 2006.

### **AWARD**

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

1. Claimants' claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 600.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Emmett A. Larkin Company, Inc., is a party.

Member surcharge	= \$ 3,350.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,500.00</u>
Total Member Fees	= \$ 9,600.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

November 29, 2004, December 20 and 21, 2004 and January 5 and 6, 2005 adjournment requested by all parties	= \$ 1,200.00
Medical Asset's share	= \$ 400.00
Arnold's share	= \$ 400.00
Respondent's share	= \$ 400.00
April 5-7, 2005 adjournment requested by Claimants	= \$ 1,200.00
September 14, 2005 adjournment requested by Claimants	= \$ 1,500.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: November 7, 2005 1 session	
Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: August 3, 2004 1 session	
February 11, 2005 1 session	
Forty (40) Hearing sessions @ \$1,200.00	= \$ 48,000.00
Hearing Dates: March 14, 2005 2 sessions	
March 15, 2005 2 sessions	
March 16, 2005 2 sessions	
April 13, 2005 2 sessions	
April 14, 2005 2 sessions	
May 5, 2005 2 sessions	
May 6, 2005 2 sessions	
May 17, 2005 2 sessions	
May 18, 2005 2 sessions	
May 25, 2005 2 sessions	

May 26, 2005	2 sessions
July 12, 2005	2 sessions
July 13, 2005	2 sessions
July 14, 2005	2 sessions
September 15, 2005	2 sessions
September 16, 2005	2 sessions
November 15, 2005	2 sessions
November 16, 2005	2 sessions
November 17, 2005	2 sessions
December 7, 2005	2 sessions

Four Deliberation Sessions with Panel @ \$1,200.00	= \$ 4,800.00
December 15, 2005 2 sessions	
January 5, 2006 2 sessions	
<b>Total Forum Fees</b>	<b>= \$55,650.00</b>

1. The Panel has assessed \$27,825.00 of the forum fees, jointly and severally, against the Claimants.
2. The Panel has assessed \$27,825.00 of the forum fees against the Respondent.

#### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

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|--|-------------|
| 1. Claimants requested 21 copies of tapes at \$15.00 per tape  | = \$ 315.00 |
| 2. Respondent requested 52 copies of tapes at \$15.00 per tape | = \$ 780.00 |

#### Fee Summary

- |  |                       |
|--|-----------------------|
| 1. Claimants are jointly and severally liable for: |                       |
| Initial Filing Fee                                 | = \$ 600.00           |
| Adjournment Fee                                    | = \$ 2,700.00         |
| Administrative Costs                               | = \$ 315.00           |
| Forum Fees   | = \$ 27,825.00        |
| <b>Total Fees</b>                                  | <b>= \$ 31,440.00</b> |
| <b>Less payments</b>                               | <b>= \$ 2,040.00</b>  |
| <b>Balance Due NASD Dispute Resolution</b>         | <b>= \$ 29,400.00</b> |
| 2. Claimant Medical Assets is solely liable for:   |                       |
| Adjournment Fee                                    | = \$ 400.00           |
| <b>Total Fees</b>                                  | <b>= \$ 400.00</b>    |

<u>Less payments</u>	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	400.00

3. Claimant Arnold is solely liable for:

<u>Adjournment Fee</u>	= \$	400.00
<u>Total Fees</u>	= \$	400.00
<u>Less payments</u>	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	400.00

4. Respondent Emmett is solely liable for:

Member Fees	= \$	9,600.00
Adjournment Fee	= \$	400.00
Administrative Costs	= \$	780.00
<u>Forum Fees</u>	= \$	27,825.00
<u>Total Fees</u>	= \$	38,605.00
<u>Less payments</u>	= \$	10,380.00
Balance Due NASD Dispute Resolution	= \$	28,225.00

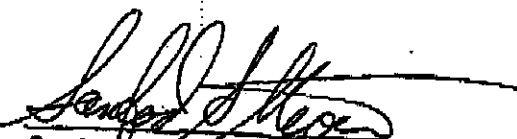
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

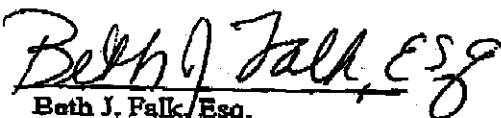
Sanford S. Stevens, Esq.	-	Public Arbitrator, Presiding Chairperson
Beth J. Falk, Esq.	-	Public Arbitrator
Linda T. Pellegrino, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

  
Sanford S. Steven, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
Beth J. Falk, Esq.  
Public Arbitrator

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

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Linda T. Pellegrino, Esq.  
Non-Public Arbitrator

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Signature Date

**January 12, 2006**

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Sanford S. Stevens, Esq.	-	Public Arbitrator, Presiding Chairperson
Beth J. Falk, Esq.	-	Public Arbitrator
Linda T. Pellegrino, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

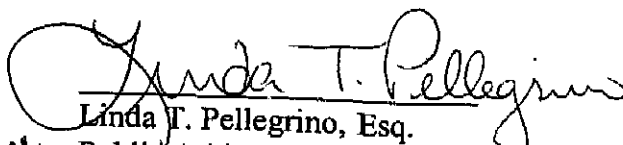
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Sanford S. Steven, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Beth J. Falk, Esq.  
Public Arbitrator

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Signature Date

  
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Linda T. Pellegrino, Esq.  
Non-Public Arbitrator

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

**January 12, 2006**

Date of Service (For NASD Dispute Resolution use only)