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

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In the Matter of the Arbitration Between:

Name of the Claimant

Olin B. Barnes

Case Number: 04-08226

Names of the Respondents

Allmerica Financial Life Insurance and Annuity Company  
VeraVest Investments, Inc.  
Stephen Parker  
Tony Wood  
Kim DeProspero  
Mike DeProspero  
FundQuest Corporation

Hearing Site: Birmingham, Alabama

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Nature of the Dispute: Associated Person vs. Member, Non-Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Olin B. Barnes, hereinafter referred to as "Claimant": Ronald O. Gaiser, Jr., Esq. and John C. Johnston, Esq., Gaiser & Associates, P.C., Birmingham, Alabama.

For Allmerica Financial Life Insurance and Annuity Company ("Allmerica"), VeraVest Investments, Inc. ("VeraVest"), Stephen Parker ("Parker"), Tony Wood ("Wood"), Kim DeProspero ("K. DeProspero") and Mike DeProspero ("M. DeProspero"): Jim H. Wilson, Esq. and Eddie Leitman, Esq., Leitman, Siegal & Payne, P.C., Birmingham, Alabama.

For FundQuest Corporation, hereinafter referred to as Respondent "FundQuest": Roger L. Bates, Esq. and Tracy R. Davis, Esq., Hand Arendall, LLC, Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: December 2, 2004.

First Amended Statement of Claim filed on or about: June 8, 2004.

Claimant signed the Uniform Submission Agreement on: October 26, 2004.

Motion to Dismiss filed by Respondents Allmerica, Parker, Wood, K. DeProspero, M. DeProspero, VeraVest and FundQuest on or about: March 23, 2005.

Claimant's Response to Motion to Dismiss filed on or about: April 29, 2005.

Statement of Answer to Claimant's Statement of Claim filed by Respondents Allmerica, VeraVest, Parker, Wood, K. DeProspero and M. DeProspero on or about: January 24, 2005.

Statement of Answer to Claimant's First Amended Statement of Claim filed by Respondents Allmerica, VeraVest, Parker, Wood, K. DeProspero and M. DeProspero on or about: June 2, 2005.

Amended Statement of Answer filed by Respondent FundQuest on or about: June 8, 2005.

Respondent Allmerica signed the Uniform Submission Agreement on: February 22, 2005.

Respondent VeraVest signed the Uniform Submission Agreement on: February 24, 2005.

Respondent Parker signed the Uniform Submission Agreement on: February 10, 2005.

Respondent Wood did not file an executed Uniform Submission Agreement.

Respondent K. DeProspero signed the Uniform Submission Agreement on: February 14, 2005.

Respondent M. DeProspero signed the Uniform Submission Agreement on: February 11, 2005.

Respondent FundQuest signed the Uniform Submission Agreement on: February 7, 2005.

### **CASE SUMMARY**

Claimant alleged the following causes of action: 1) breach of contract by Respondents Allmerica, VeraVest, K. DeProspero, Parker, Wood and M. DeProspero; 2) conversion by Respondents Allmerica, VeraVest, K. DeProspero, Wood and M. DeProspero; 3) breach of contract by Respondent FundQuest; and 4) unjust enrichment by Respondents Allmerica, Parker, Wood, K. DeProspero, M. DeProspero, VeraVest and FundQuest. Claimant alleged that Respondents Allmerica, Parker, Wood, K. DeProspero and M. DeProspero owed funds to Claimant for Claimant's work for Respondent Allmerica, including but not limited to, Claimant's introduction of Respondent FundQuest to Colonial Bank and introduction of Ash Brokerage to Colonial Bank. Claimant alleged that Respondent FundQuest owed Claimant funds for Claimant's introduction of Respondent FundQuest to Colonial Bank in connection with Claimant's work for Respondent Allmerica.

Unless specifically admitted in their Statement of Answer, Respondents Allmerica, Parker, Wood, K. DeProspero, M. DeProspero, VeraVest and FundQuest denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$1,500,000.00 for breach of contract by Respondents Allmerica, VeraVest, K. DeProspero, Parker, Wood and M. DeProspero; 2) compensatory damages in the amount of \$1,500,000.00 for conversion by Respondents Allmerica, VeraVest, K. DeProspero, Wood and M. DeProspero; 3) punitive damages in the amount of \$3,000,000.00 for conversion by Respondents Allmerica, VeraVest, K. DeProspero, Wood and M. DeProspero; 4) compensatory damages in the amount of \$1,500,000.00

for breach of contract by Respondent FundQuest; 5) compensatory damages in the amount of \$1,500,000.00 for unjust enrichment by Respondents Allmerica, Parker, Wood, K. DeProspero, M. DeProspero, VeraVest and FundQuest; 6) costs; and 7) attorneys' fees.

Respondents Allmerica, Parker, Wood, K. DeProspero, M. DeProspero, VeraVest and FundQuest requested: 1) dismissal of Claimant's claims; 2) costs; and 3) such other relief the Panel deemed just and proper.

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

Respondent FundQuest is not a member of NASD. Respondent FundQuest voluntarily submitted to arbitration and, having answered the claim, signed a Uniform Submission Agreement, and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondent Wood did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (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.

By stipulation of the parties and with permission of the Panel, Respondent Parker did not attend the evidentiary hearing in person, but appeared by deposition and through his counsel at the evidentiary hearing, and Respondent M. DeProspero did not attend the evidentiary hearing in person but appeared through his counsel at the evidentiary hearing.

On or about May 10, 2005, the Panel: 1) dismissed Counts II (misrepresentation), III (misrepresentation) and IV (wrongful interference with business relationship) of Claimant's Statement of Claim; 2) denied dismissal of Counts I (breach of contract) and VI (breach of contract); 3) did not rule on Count V (conversion) as it was not subject to the motion; and 4) granted Claimant leave to file an amendment to the Statement of Claim.

On or about September 1, 2005, the parties filed their joint request to adjourn the evidentiary hearing scheduled for October 4 – 7, 2005. On or about September 12, 2005, the Panel granted the request, adjourned the evidentiary hearing and deferred assessment of the \$1,200.00 adjournment fee until conclusion of the evidentiary hearing. Following the evidentiary hearing, the Panel assessed the adjournment fee in the amount of \$1,200.00 to Respondent Allmerica.

On or about December 30, 2005, Respondents filed their Motion for Partial Summary Disposition wherein the Respondents requested the Panel to: 1) grant the motion; 2) grant summary disposition in favor of Respondents Parker, Wood, K. DeProspero and M. DeProspero as individuals on all of the claims against them; 3) grant summary disposition in favor of all Respondents on Claimant's conversion claim; 4) find that there is no just reason for delay and direct final disposition of the claims; and 5) render Respondents such other and further relief that the Panel deems appropriate under the circumstances. On or about January 6, 2006, Claimant filed a written opposition to the motion.

At the evidentiary hearing, Respondents Allmerica, Parker, Wood, K. DeProspero, M. DeProspero, VeraVest and FundQuest made an *ore tenus* motion for directed verdict. Claimant opposed the motion. The Panel granted the motion in part and denied the motion in part thereby rendering Respondents' Motion for Partial

Summary Disposition moot.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claim of breach of contract against Respondents Allmerica and VeraVest is denied.
2. Claimant's claim of breach of contract against Respondents K. DeProspero, Parker, Wood and M. DeProspero is dismissed, with prejudice, by directed verdict following the close of Claimant's case-in-chief.
3. Claimant's claim of conversion against Respondents Allmerica and VeraVest is denied.
4. Claimant's claim of conversion against Respondents K. DeProspero, Wood and M. DeProspero is dismissed, with prejudice, by directed verdict following the close of Claimant's case-in-chief.
5. Claimant's claim of breach of contract against Respondent FundQuest is dismissed, with prejudice, by directed verdict following the close of Claimant's case-in-chief.
6. Claimant's claim of unjust enrichment against Respondents Allmerica and VeraVest is denied.
7. Claimant's claim of unjust enrichment against Respondents K. DeProspero, Parker, Wood, M. DeProspero and FundQuest is dismissed, with prejudice, by directed verdict following the close of Claimant's case-in-chief.
8. Claimant's requests for punitive damages and attorneys' fees are denied.
9. Respondent Allmerica is liable and shall reimburse Claimant the sum of \$600.00 representing the claim filing fee previously paid by Claimant to NASD Dispute Resolution.
10. Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

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

#### **Filing Fees**

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

Initial claim filing fee

= \$ 600.00

### **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. Respondent Allmerica was a member firm that employed the associated person at the time of the events giving rise to the dispute and is a party, and Respondent Veravest is a member firm and a party.

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

On or about September 1, 2005, the parties filed their joint request to adjourn the evidentiary hearing scheduled for October 4 – 7, 2005. On or about September 12, 2005, the Panel granted the request, adjourned the evidentiary hearing and deferred assessment of the adjournment fee until conclusion of the evidentiary hearing. Following the evidentiary hearing, the Panel assessed the adjournment fee in the amount of \$1,200.00 to Respondent Allmerica.

### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

### **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 per session = \$ 450.00  
Pre-hearing conference: August 19, 2005 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 per session = \$ 2,400.00  
Pre-hearing conferences: April 4, 2005 1 session  
May 11, 2005 1 session

Eleven (11) Hearing sessions @ \$1,200.00 per session = \$13,200.00  
Hearing Dates: January 10, 2006 3 sessions  
January 11, 2006 3 sessions  
January 12, 2006 3 sessions  
January 13, 2006 2 sessions

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Total Forum Fees = \$16,050.00

The Panel has assessed the total forum fees in the amount of \$16,050.00 to Respondent Allmerica.

**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.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Allmerica is solely liable for:

Member Fees	= \$ 9,600.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	= \$16,050.00
<u>Total Fees</u>	= \$26,850.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$18,300.00

Respondent Veravest is solely liable for:

<u>Member Fees</u>	= \$ 9,600.00
<u>Total Fees</u>	= \$ 9,600.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 1,050.00

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

**ARBITRATION PANEL**

<i>Rosemarie L. Bryan, J.D.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Perry P. Benton, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Richard L. Oates</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Rosemarie L. Bryan, J.D.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
January 19, 2006  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Perry P. Benton, Esq.  
Public Arbitrator

\_\_\_\_\_  
January 19, 2006  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Richard L. Oates  
Non-Public Arbitrator

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January 20, 2006  
Signature Date

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January 20, 2006  
Date of Service (For NASD Dispute Resolution office use only)

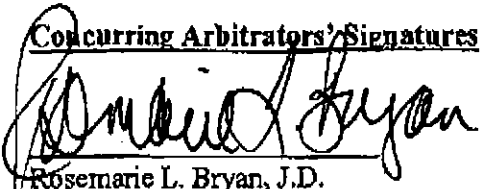
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*Rosemarie L. Bryan, J.D.*  
*Perry P. Benton, Esq.*  
*Richard L. Oates*

- *Public Arbitrator, Presiding Chairperson*  
- *Public Arbitrator*  
- *Non-Public Arbitrator*

Concurring Arbitrators' Signatures



Rosemarie L. Bryan, J.D.  
Public Arbitrator, Presiding Chairperson

1/19/06  
Signature Date

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Perry P. Benton, Esq.  
Public Arbitrator

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

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Public Arbitrator, Presiding Chairperson

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Signature Date

*Perry P. Benton*  
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Perry P. Benton, Esq.  
Public Arbitrator

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Signature Date

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Non-Public Arbitrator

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<i>Richard L. Oates</i>	-	<i>Non-Public Arbitrator</i>


**Concurring Arbitrators' Signatures**

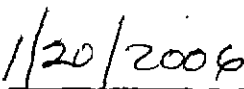
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Public Arbitrator, Presiding Chairperson

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Perry P. Benton, Esq.  
Public Arbitrator

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