

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Howe Barnes Investments, Inc.

and

05-02602  
Chicago, Illinois

Name of Respondent

Barry M. Hanes

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Nature of the Dispute: Member vs. Associated Person.

**REPRESENTATION OF PARTIES**

Howe Barnes Investments, Inc. ("**Claimant**") was represented by David T.B. Audley, Esq. and James P. Sullivan, Esq., Chapman & Cutler, LLP, Chicago, Illinois.

Barry M. Hanes ("**Respondent**") was represented by James J. Eccleston, Esq. and Jeffrey M. Gershon, Esq., Shaheen Novoselsky Staat Filipowski & Eccleston, P.C., Chicago, Illinois.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 17, 2005. Reply to Affirmative Defenses and Counterclaim was filed on or about July 22, 2005. Submission Agreement of Claimant Howe Barnes Investments, Inc. was signed on May 13, 2005.

Statement of Answer and Counterclaim was filed by Respondent Barry M. Hanes on or about July 8, 2005. Submission Agreement of Respondent Barry M. Hanes was signed on July 14, 2005.

**CASE SUMMARY**

Howe Barnes asserted the following cause of action: collection of a promissory note and recovery of costs and settlement amounts from a previous matter.

Unless specifically admitted in his Answer, Hanes denied the allegations made in the Statement of Claim and asserted a Counterclaim for breach of contract, wrongful termination, defamation, failure to pay for recruitment and lost production.

Unless specifically admitted in its Answer to Counterclaim, Howe Barnes denied the allegations made in the Counterclaim.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$49,212.00 in compensatory damages, plus costs, interest and attorney's fees.

Respondent requested that the claims asserted against he be denied in their entirety and that he be awarded \$100,000.00 in compensatory damages, plus costs and attorney's fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Prior to the hearing, the parties fully and finally settled all claims by and between them with each Party denying all liability to the other. The parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

Pursuant to the above, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Hanes shall pay Howe Barnes compensatory damages in the amount of \$6,000.00.
2. The Parties agree that no execution on this Award shall occur, nor shall it be confirmed, and the Award shall be deemed satisfied, provided that Hanes provides Howe Barnes with an affidavit as to his exact net equity total, makes one payment of \$1,000.00 by May 8, 2006 and a payment of \$5,000.00 on or before December 29, 2006 in available lawful money of the United States to Howe Barnes Investments, Inc. c/o James Sullivan, Esq., Chapman & Cutler LLP, 111 Monroe Street, Chicago, IL 60603, or at such other place or entity as Howe Barnes may designate, without interest (except as provided below). In the event Howe Barnes fails to receive payment of any amount under this paragraph 2 when due (an "Event of Default"), then an amount of \$10,000.00, less any payments previously received by Howe Barnes, shall at once be due and payable to Howe Barnes.

3. The NASD shall expunge the information on Hanes's CRD record that Hanes was terminated for failure to adhere to firm policies and procedures. Instead the NASD shall state that Hanes resigned voluntarily from Howe Barnes on February 14, 2006.
4. The expungement relief is granted based on the defamatory nature of the information in the CRD system. However, there has been no finding that the elements required to satisfy a claim for defamation under governing law have been met and the parties have not admitted liability.
5. The NASD forum fees and assessments, if any, will be divided equally between the parties as set forth below and all of the costs and expenses, including attorneys' fees and mediation fees, shall be borne by the respective parties.
6. Any and all relief not specifically addressed herein is denied in its entirety.

### **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	= \$1,000.00
Counter claim/Cross claim/Third Party Claim filing fee	= \$225.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Howe Barnes Investments, Inc.

Member surcharge	\$ 875.00
Pre-hearing process fee	\$ 750.00
Hearing process fee	\$ 1,700.00
Total Member Fees	\$ 3,325.00

### **Forum Fees and Assessments**

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

1	Pre-hearing session(s) with a single arbitrator	x	\$450.00	\$	450.00
	September 26, 2006	1	session		
1	Telephonic Hearing (expungement relief)	X	\$750.00		750.00
	May 26, 2006	1	session		
	Total Forum Fees			\$	<u>1,200.00</u>

The Arbitration Panel has assessed \$600.00 of the forum fees to Howe Barnes Investments, Inc.

The Arbitration Panel has assessed \$600.00 of the forum fees to Barry M. Hanses.

### **Fee Summary**

Claimant, Howe Barnes Investments, Inc., is liable for:

Initial Filing Fee	= \$	1,000.00
Member Fees	= \$	3,325.00
<u>Forum Fees</u>	= \$	<u>600.00</u>
Total Fees	= \$	4,925.00
<u>Less payments</u>	= \$	<u>-4,925.00</u>
Balance due NASD Dispute Resolution	= \$	0.00

Respondent, Barry M. Hanses, is liable for:

Counterclaim Filing Fee	= \$	225.00
<u>Forum Fees</u>	= \$	<u>600.00</u>
Total Fees	= \$	825.00
<u>Less payments</u>	= \$	<u>-975.00</u>
Balance to be refunded by NASD Dispute Resolution	= \$	-150.00

**All balances are due to NASD Dispute Resolution**

### **ARBITRATION PANEL**

Michael S. Jordon - Public Arbitrator, Presiding Chair  
Robert L. Agosto, Esq. - Public Arbitrator  
Peter A. Maren, J.D. - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ Michael S. Jordon  
Michael S. Jordon  
Public Arbitrator, Presiding Chair

05/31/06  
Signature Date

/s/ Robert L. Augusto  
Robert L. Augusto, Esq.  
Public Arbitrator

06/08/06  
Signature Date

/s/ Peter Maren  
Peter A. Maren, J.D.  
Non-Public Arbitrator

06/05/06  
Signature Date

Date of Service (For NASD office use only)

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Arbitration No. 05-02602  
Stipulated Award Page 5 of 5

Concurring Arbitrators:

Michael S. Jordan

Michael S. Jordan  
Public Arbitrator, Presiding Chair

5/31/06

Signature Date

Robert L. Agosto, Esq.  
Public Arbitrator

Signature Date

Peter A. Maren, J.D.  
Non-Public Arbitrator

Signature Date

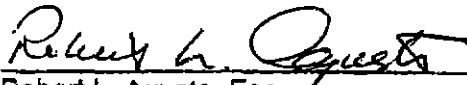
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Public Arbitrator, Presiding Chair

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Signature Date

  
\_\_\_\_\_  
Robert L. Agosto, Esq.  
Public Arbitrator

June 8, 2006  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Peter A. Maren, J.D.  
Non-Public Arbitrator

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