

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 05-05139

Albert Awakim, Individually  
Albert Awakim IRA Rollover DTD  
Marc B. Wolin as Authorized Agent and  
Representative of Deborah D. Wolin  
Deborah D. Wolin Roth IRA  
Marc B. Wolin Roth IRA  
Kendall A. Wolin UTMA  
Deborah D. Wolin Traditional IRA  
Marc B. Wolin Traditional IRA  
Courtney M. Wolin

Names of the Respondents

Hearing Site: Little Rock, Arkansas

St. Bernard Financial  
Daniel Barnett

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Albert Awakim, Individually, Albert Awakim IRA Rollover DTD, Marc B. Wolin as Authorized Agent and Representative of Deborah D. Wolin, Deborah D. Wolin Roth IRA, Marc B. Wolin Roth IRA, Kendall A. Wolin UTMA, Deborah D. Wolin Traditional IRA, Marc B. Wolin Traditional IRA and Courtney M. Wolin, hereinafter collectively referred to as "Claimants": Kenneth Shemin, Esq., Shemin & Hendren, PLLC, Fayetteville, Arkansas.

For St. Bernard Financial ("STB"): John D. Van Klee, Esq., Van Klee, Kelley & Collins, LP, Russellville, Arkansas.

For Daniel Barnett ("Barnett"): Richard T. Donovan, Esq., Rose Law Firm, Little Rock, Arkansas.

**CASE INFORMATION**

Statement of Claim filed on or about: October 3, 2005.

Claimants signed the Uniform Submission Agreement on or about: October 1, 2005.

Statement of Answer and "Counterclaim" filed by Respondent STB on or about:  
November 29, 2005.

Respondent STB signed the Uniform Submission Agreement on or about: November  
29, 2005.

Statement of Answer filed by Respondent Barnett on or about: December 5, 2005.

Respondent Barnett signed the Uniform Submission Agreement on or about: November

16, 2005.

Amended Statement of Claim filed on or about: March 2, 2006.

Respondent Barnett's Response to Claimants' Amended Claim filed on or about: March 6, 2006.

Answer of Respondent STB to Amended Statement of Claim and Motion to Dismiss filed on or about: March 17, 2006.

Claimants' Response to Motion to Dismiss filed on or about: April 3, 2006.

Respondent Barnett's Motion to Dismiss Claimants' Amended Statement of Claim filed on or about: May 9, 2006.

### **CASE SUMMARY**

Claimants asserted the following causes of action: 1) violation of Arkansas Code Ann. Sections 23-42-106 and 23-42-301; 2) common law fraud; 3) constructive fraud; and, 4) violation of Arkansas Deceptive Trade Practices Act, Arkansas Code Annotated Section 4-88-107. The causes of action relate to Claimant's stock investment in, including but not limited to, Cryolife, LMLP, Sheffield and Vion.

Unless specifically admitted in their Answers, Respondents STB and Barnett denied the allegations made in the Statement of Claim, as amended, and asserted various affirmative defenses.

Respondent STB asserted in its "Counterclaim" that Claimants' causes of action are outside of the statute of limitations.

### **RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in the amount of \$10,000,000.00; 2) punitive damages in the amount of \$3,000,000.00; 3) costs, including forum fees; 4) attorneys' fees; and, 5) other case related costs.

In its "Counterclaim," Respondent STB requested costs and attorneys' fees in an amount no less than \$15,000.00.

Respondent Barnett requested that Claimants' claims be dismissed.

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

During the initial pre-hearing conference on February 23, 2006, the Panel granted Claimants' request to submit an Amended Statement of Claim.

On or about May 31, 2006 the Panel issued an order denying Respondent STB's Motion to Dismiss the Amended Statement of Claim.

During the evidentiary hearing, Respondent STB made an ore tenus motion asking that Claimants' claims be barred by rejudication and by statute of limitations. The motion was granted in part and denied in part.

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.

### **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:

All claims and counterclaims are denied with prejudice, including Claimants' claim for punitive damages and for relief under the Arkansas Code Annotated Sections 23-42-106, 23-42-301 and 4-88-107 and the parties' claims for attorneys' fees.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure ("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, Respondent STB is a party and a member firm.

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,500.00</u>
Total Member Fees	= \$10,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

For the September 25 - 26, 2006 adjournment requested by Respondent Barnett, the Panel has assessed an adjournment fee of \$1,200.00 to Respondent Barnett.

#### **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 or each decision rendered on a discovery-related motion on the papers. 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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences: February 23, 2006	1 session
May 10, 2006	1 session
Five (5) Hearing sessions @ \$1,200.00/session	=\$6,000.00
Hearing Dates: November 13, 2006	2 sessions
November 14, 2006	3 sessions
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Total Forum Fees	=\$8,400.00

The Panel has assessed forum fees of \$4,200.00 to Claimants, jointly and severally.  
The Panel has assessed forum fees of \$4,200.00 to Respondent Barnett.

### **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 are 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**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$ 4,800.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00

Respondent STB is solely liable for:

Member Fees	= \$10,000.00
Total Fees	= \$10,000.00
Less payments	= \$10,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Barnett is solely liable for:

Adjournment Fees	= \$ 1,200.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$ 5,400.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,400.00

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

**ARBITRATION PANEL**

John A. Davis, III, Esq.	-	Public Arbitrator, Presiding Chairperson
Robert T. Gammill, Jr.	-	Public Arbitrator
Richard D. Bingham	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
John A. Davis, III, Esq.  
Public Arbitrator, Presiding Chairperson

November 27, 2006  
Signature Date

/s/  
Robert T. Gammill, Jr.  
Public Arbitrator

November 25, 2006  
Signature Date

/s/  
Richard D. Bingham  
Non-Public Arbitrator

November 22, 2006  
Signature Date

November 27, 2006  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 05-05139  
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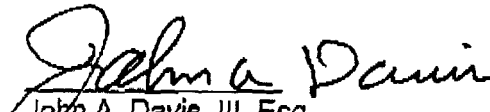
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Public Arbitrator, Presiding Chairperson

11/27/06  
Signature Date

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Public Arbitrator

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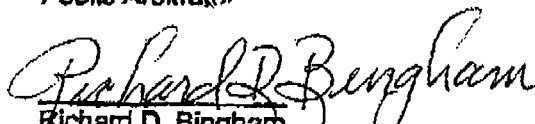
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Signature Date

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 Public Arbitrator

Signature Date

  
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 Non-Public Arbitrator

11/02/06  
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Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Robert T. Gammill, Jr.  
Public Arbitrator

11-25-06  
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