

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

John F. Crawley, Claimant v. Carlin Equities Corporation n/k/a Carlin Equities, LLC,  
Respondent

Case Number: 06-01482

Hearing Site: Denver, Colorado

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Nature of the Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

For Claimant:

Russell K. Bean, Esq.  
Dana Baggs, Esq.  
Krys Boyle, P.C.  
Denver, Colorado

For Respondent:

D. Elizabeth Wills, Esq.  
Michael Pippenger, Esq.  
Rothgerber, Johnson &  
Lyons, LLP  
Denver, Colorado

**CASE INFORMATION**

Statement of Claim filed: March 21, 2006

Claimant's Uniform Submission Agreement signed: March 6, 2006

Statement of Answer filed by Respondent: June 7, 2006

Respondent's Uniform Submission Agreement signed: June 7, 2006

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability, securities fraud, negligence, and breach of agreement. Claimant's allegations involved large purchases of shares of Ultimate Electronics, Amgen, Andrew, and Genentech.

Unless specifically admitted in its Answer, Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested \$249,222.95 in compensatory damages, unspecified punitive damages, interest, and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

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

Respondent filed a Motion to Dismiss Statement of Claim and Motion for Summary Judgment, dated July 20, 2006. Claimant filed a Response to Respondent's Motion to Dismiss and a Response to Respondent's Motion for Summary Judgment, dated September 5, 2006. Respondent filed a Reply in Support of its Motion to Dismiss Statement of Claim and Reply in Support of its Motion for Summary Judgment, dated September 25, 2006. On October 24, 2006, the parties and the Panel participated in a pre-hearing conference during which the Panel heard oral argument regarding Respondent's motions. Later that day, the Panel issued an Order denying Respondent's Motion to Dismiss and granting Respondent's Motion for Summary Judgment with respect to Claimant's claim for breach of agreement. The Panel found that Claimant had failed to submit evidentiary facts to controvert the facts as set forth in Respondent's motion, as required by applicable law. During the evidentiary hearing, Respondent renewed its Motion to Dismiss at the close of Claimant's case in chief. The Panel denied Respondent's motion.

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 Claimant the sum of \$228,224.17 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimant interest in the amount of 5% per annum on \$228,224.17 from the date of service of this Award until the date that all compensatory damages awarded are paid to Claimant.
- 3) The parties shall bear their respective costs, including attorney's fees.

- 4) Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the 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. Accordingly, the member firm Carlin Equities Corporation is a party, and the following fees are assessed:

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

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), which lasts four (4) hours or less. The following forum fees are assessed:

Two (2) pre-hearing conference sessions with the Panel		
@ \$1,125.00/session		
Pre-hearing conferences:	August 31, 2006	1 session
	October 24, 2006	1 session
		= \$2,250.00
Eight (8) hearing sessions @ \$1,125.00/session		
= \$9,000.00		
Hearings:	February 6, 2007	2 sessions
	February 7, 2007	2 sessions
	February 8, 2007	2 sessions
	February 9, 2007	2 sessions
<b>Total Forum Fees</b>		<b>= \$11,250.00</b>

1. The Panel assessed \$5,625.00 of the forum fees to Claimant.
2. The Panel assessed \$5,625.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 5,625.00
Total Fees	= \$ 5,925.00
Less payments	= \$(1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,500.00</b>

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

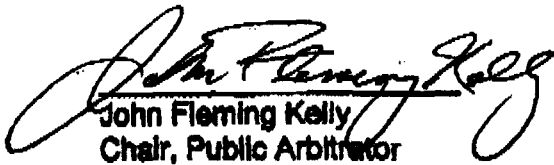
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 5,625.00
Total Fees	= \$10,825.00
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,625.00</b>

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**

<b>John Fleming Kelly</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>Donald L. Tolin</b>	-	<b>Public Arbitrator</b>
<b>Paul A. Krepinaki</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

  
John Fleming Kelly  
Chair, Public Arbitrator

2/12/07  
Signature Date

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Donald L. Tolin  
Public Arbitrator

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

\_\_\_\_\_  
Paul A. Krepinaki  
Non-Public Arbitrator

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

2/13/07  
Date of Service

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Donald L. Tolin  
Public Arbitrator

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Signature Date

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Signature Date

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Paul A. Krepinski  
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