

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
David Gary Eigen

Case Number: 06-01822

Names of the Respondents  
Capital Growth Financial, LLC  
Gary Jon Krystyniak

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

David Gary Eigen, hereinafter referred to as "Claimant," appeared pro se.

For Capital Growth Financial, LLC ("CGF"): Charles E. Scarlett, Esq., General Counsel,  
Capital Growth Financial, LLC, Boca Raton, Florida.

Gary Jon Krystyniak ("Krystyniak") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: April 10, 2006.

Claimant signed the Uniform Submission Agreement on: March 26, 2006.

Statement of Answer filed by Respondent CGF on or about: June 6, 2006.

Statement of Answer filed by Respondent Krystyniak on or about: June 9, 2006.

Respondent CGF signed but did not date the Uniform Submission Agreement.

Respondent Krystyniak did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) misrepresentation or misleading information; and, 2) unsuitability. The causes of action relate to Claimant's investment in shares of common stock in LNUX and Tri-S.

Unless specifically admitted in their respective Answers, Respondents CGF and Krystyniak denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$10,782.33; 2) interest calculated at 18% of the Award; 3) forum fees; 4) attorneys' fees; 5) witness and production fees; and, 6) other case-related costs.

Respondents CGF and Krystyniak respectively requested that the undersigned arbitrator (the "Arbitrator") dismiss the Statement of Claim in its entirety.

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

Respondent Krystyniak 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, is bound by the determination of the Arbitrator on all issues submitted.

On or about August 1, 2006, Claimant filed with NASD Dispute Resolution a notice of dismissal, with prejudice, of Respondent Krystyniak.

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 Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

All claims for relief, including Claimant's claim for attorneys' fees, are 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	= \$125.00
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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 CGF is a party and a member firm.

Member surcharge	= \$425.00
Total Member Fees	= \$425.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

#### **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 Arbitrator.

There were no injunctive relief fees assessed during these proceedings.

### **Forum Fees and Assessments**

The Arbitrator 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 Arbitrator, including a pre-hearing conference with the Arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with sole arbitrator @ \$450.00/session=	= \$ 900.00
Pre-hearing conferences: July 25, 2006	1 session
August 14, 2006	1 session

Two (2) Hearing sessions @ \$450.00/session	= \$ 900.00
Hearing Date: October 18, 2006	2 sessions

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Total Forum Fees	= \$1,800.00
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The Arbitrator has assessed \$900.00 of the forum fees to the Claimant.

The Arbitrator has assessed \$900.00 of the forum fees to Respondent CGF.

### **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**

Claimant is solely liable for:

Initial Filing Fee	= \$ 125.00
Forum Fees	= \$ 900.00
Total Fees	= \$1,025.00
Less payments	= \$ 575.00
Balance Due NASD Dispute Resolution	= \$ 450.00

Respondent CGF is solely liable for:

Member Fees	= \$ 425.00
Forum Fees	= \$ 900.00
Total Fees	= \$1,325.00
Less payments	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 900.00

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

**ARBITRATOR**

Stan West - Public Arbitrator

**Arbitrator's Signature**

/s/  
Stan West  
Public Arbitrator

October 19, 2006  
Signature Date

October 23, 2006

Date of Service (For NASD Dispute Resolution office use only)

Respondent CGF is solely responsible for:

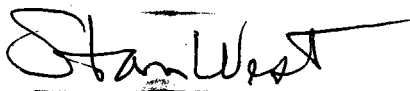
Member Fees	= \$ 425.00
Forum Fees	= \$ 0.00
Total Fees	= \$ 425.00
Less payments	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 900.00

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

ARBITRATOR

Stan West

Public Arbitrator

Arbitrator's Signature

Stan West  
Public Arbitrator

October 19, 2006

Signature Date

Date of Service (For NASD Dispute Resolution office use only)