

**N.A.S.D. REGULATION AWARD**

**NASD Regulation, Inc. Office of Dispute Resolution**

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In the Matter of the Arbitration Between

**Name of Claimant**

Barney F. Hayes

96-05624

**Name of Respondents**

LaJolla Capital Corp.  
Larry Todd Kelly  
Paul Vincent Pintor  
Emmett A. Larkin & Co., Inc.  
B.J. Gallison  
Lee Swift  
Kyle Rowe  
Janice Schultz

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**REPRESENTATION OF PARTIES**

For Claimant: Steven M. Green, Esq., Law Offices of Steven M. Green, San Diego, California.

For LaJolla Capital Corp., B.J. Gallison, and Lee Swift: James C. Weaver, Esq., Law Offices of James C. Weaver, San Diego, California.

For Larry Todd Kelly: Appeared pro se.

For Paul Vincent Pintor: Appeared pro se.

For Emmett A. Larkin & Co., Inc.: Melvin L. Peterson, Executive Vice-President, Emmett A. Larkin & Co., Inc., San Francisco, California.

For Kyle Rowe: Tracy Pride Stoneman, Esq., Susemihl & McDermott, Colorado Springs, Colorado.

For Janice Schultz: Did not appear.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on or about December 17, 1996.

Claimant's Submission Agreement was signed on December 16, 1996.

The Joint Statement of Answer for LaJolla Capital Corp., B.J. Gallison, Lee Swift and Janice Schultz was filed on or about March 20, 1997.

The Submission Agreement for LaJolla Capital Corp., Inc. and B.J. Gallison was signed on February 21, 1997.

Lee Swift's Submission Agreement was signed on March 20, 1997.

Larry Todd Kelly's Statement of Answer was filed on or about May 9, 1997.

Larry Todd Kelly's Submission Agreement was signed on May 6, 1997.

Paul Vincent Pintor's Statement of Answer was filed on or about July 10, 1997.

Paul Vincent Pintor's Submission Agreement was signed on April 15, 1997.

Emmett A. Larkin's Statement of Answer was filed on or about March 6, 1997.

The Submission Agreement for Emmett A. Larkin & Co., Inc. was signed on March 5, 1997.

Kyle Rowe's Statement of Answer was filed on or about April 2, 1997

Kyle Rowe's Submission Agreement was signed on April 4, 1997.

### **HEARING INFORMATION**

Pre-hearing conferences were held on:	July 7, 1997	1 session;
	July 30, 1997	1 session;
	August 14, 1997	1 session;
	September 3, 1997	1 session;

The hearing was held in San Diego, California on:

September 8, 1997	2 sessions;
September 9, 1997	2 sessions;
September 10, 1997	2 sessions;
September 11, 1997	2 sessions;
September 12, 1997	1 sessions;
February 24, 1998	2 sessions;
February 25, 1998	2 sessions.

### **CASE SUMMARY**

Claimant alleges that the Respondents induced Claimant purchase speculative securities such as Environmental Techs USA, Inc., Video Sentry Corp., and Greenland Corp.. Claimant alleges that the Respondents actions constitute breach of fiduciary duty, misrepresentation, fraud, breach of contract and covenant of good faith and fair dealing, negligence, conversion, negligent infliction of emotional distress and violations of the Elder Abuse Act. Claimant further alleges that Respondents actions constitute violations of the Securities Act of 1933, and violations of the California Corporate Securities Act of 1968.

Each of the Respondents denied the allegations set forth in the Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$29,000 plus interest, costs and attorneys' fees. Additionally, Claimant requested that the sale of the securities be rescinded and the amount of the

purchase price of the securities be returned to the Claimant. Claimant further requested that punitive damages in an amount to be specified at the hearing be awarded to the Claimant.

Each of the respondents requested that the all claims asserted be denied in their entirety and each respondent further requested that they be awarded their costs including attorneys' fees.

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

Respondent Janice Schultz did not file with the NASD a properly executed Uniform Submission Agreement and although LaJolla Capital Corp. filed a joint answer on behalf of several respondents including Ms. Schultz, James Weaver, counsel for LaJolla Capital Corp. did not represent Ms. Schultz at the hearing. Ms. Schultz is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim is bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with NASD Regulation, Inc., Office of Dispute Resolution.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:


1. The Motion for Summary Judgement filed by Emmett A. Larkin & Co., Inc. is granted, however, the request for reimbursement of costs is denied;
2. Each and every claim made in the Statement of Claim is denied;
3. Claimant's request for rescission is denied;
4. Claimant's request for attorneys' fees and punitive damages is denied;
5. Respondents' requests for attorneys' fees and costs are denied;
6. Each side to bear their own costs and expenses.

### **FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference with one arbitrator, if any. There were 2 pre-hearing conference sessions x \$300 plus 15 sessions x \$400 = \$6,600 in forum fees. Pursuant to §10332(b) of the NASD Regulation, Inc., Office of Dispute Resolution Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. Pursuant to §10332(c) of the Code of Arbitration Procedure, all forum fees are assessed against LaJolla Capital Corp., Inc..

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$100. NASD Regulation shall refund the hearing session deposit of \$400 previously deposited by the Claimant.

Fees are payable to the NASD, Regulation, Inc.

  
James D. Klotter, Esq.  
Public Arbitrator, Presiding Chair

Dated:

4/1/98

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Donald B. McNelley, Esq.  
Public Arbitrator

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Lewis C. Brown  
Industry Arbitrator

Date served: 4/7/1998

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. shall **retain** the non-refundable filing fee in the amount of \$100. NASD Regulation shall **refund** the hearing session deposit of \$400 previously deposited by the Claimant.

**Fees are payable to the NASD, Regulation, Inc.**

Dated:

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James D. Knotter, Esq.  
Public Arbitrator, Presiding Chair

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*Donald B. McNelley*  
Donald B. McNelley, Esq.  
Public Arbitrator

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Lewis C. Brown  
Industry Arbitrator

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*April 6, 1998*  
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Date served: 4/7/1998


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Public Arbitrator, Presiding Chair

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Lewis C. Brown  
Industry Arbitrator

Date served: 4/7/1998