

**AWARD**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Sacate Pellet Mills, Inc.

and

99-01672  
Scottsdale, Arizona

Name of Respondents

Capital West Investment Group, Inc.  
Lawrence L. Kohler

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**REPRESENTATION OF PARTIES**

Sacate Pellet Mills, Inc. ("**Claimant**") was represented by Robert D. Mitchell, Esq., Mitchell Law Offices, Phoenix, Arizona.

Capital West Investment Group, Inc. ("**Respondent Capital West**") and Lawrence L. Kohler ("**Respondent Kohler**") were represented by Robert J. Itri, Esq., Gallagher & Kennedy, P.A., Phoenix, Arizona. Respondent Capital West Investment Group, Inc. did not appear at the hearing. Respondent Lawrence L. Kohler appeared at the hearing *pro se*.

**CASE INFORMATION**

Statement of Claim and Demand for Arbitration was filed on or about April 9, 1999. Submission Agreement of Claimant Sacate Pellet Mills, Inc. was signed on March 26, 1999 by Earl Petznick, Jr.

Statement of Answer to Statement of Claim and Demand for Arbitration was filed by Respondents Capital West Investment Group, Inc. and Lawrence Lester Kohler on or about August 16, 1999.

**CASE SUMMARY**

Claimant submitted the following summary:

Claimant Sacate alleged that the Respondents Capital West Investment Group, Inc. and Lawrence Kohler, President, Chief Executive Officer, General Securities Principal, Compliance Officer, and owner of Capital West caused to be promoted to Claimant a highly speculative investment involving substantial risks, in a debt instrument issued by the

Respondent firm, Capital West. The investment was supposed to return 12% interest. The Claimant alleged that the \$120,000.00 investment by Sacate in the debt instrument resulted in a complete loss.

The Claimant alleged that the Respondents committed breach of contract, and violated NASD Conduct Rules, Arizona and Federal securities laws; committed common law fraud, intentional misrepresentation, negligent misrepresentation, and breach of fiduciary duty, by failing to fully, and accurately, describe the investment for which the Claimant was being solicited to invest. For example, the Respondents failed to disclose the dire financial condition of Capital West at the time, or the conflicts of interest involved in soliciting such an investment from their customers.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that without their participation, authorization or knowledge, Milton Barnes, III solicited the purchase by Claimant of 80,000 shares of Soy Environmental Products, Inc. In addition, Respondents stated that Mr. Barnes provided Claimant with an option to put the stock back to Capital West at \$1.60 per share if certain conditions were met. Respondents stated that the terms of the sale and option were reduced to writing and signed by Mr. Barnes without the authorization, participation, or knowledge of Respondents.

#### **RELIEF REQUESTED**

The Claimant requested an award of the following:

Compensatory damages of at least \$120,000.00 plus interest at the rate of 12% per the express terms of the investment documentation, jointly and severally against Respondent Lawrence Kohler and Respondent Capital West, recovery of Claimant's filing fees and such other costs and expenses as have been incurred in bringing this arbitration, and attorneys' fees. The Claimant also sought punitive damages in an amount not less than \$100,000.00, and such other relief in favor of the Claimant as the arbitrators deem just and proper under the circumstances.

Respondents requested that the arbitration panel:

- Dismiss the Claimant's Statement of Claim with prejudice;
- Award Respondents their costs and attorneys' fees incurred herein; and
- Grant Respondents such other and further relief which the Arbitration Panel deems just and proper.

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

The undersigned arbitrators have determined that Respondent Capital West Investment Group, Inc. had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondents Capital West Investment Group, Inc. and Lawrence L. Kohler did not file with the NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim are bound by the determination of the arbitration panel on all issues submitted.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD").

### **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. Respondents Capital West Investment Group, Inc. and Lawrence L. Kohler, shall be and hereby are jointly and severally liable for and shall pay to the Claimant Sacate Pellet Mills, Inc. the sum of \$171,011.20 (**One Hundred Seventy One Thousand Eleven Dollars and Twenty Cents**). This sum includes an award of prejudgment interest. This sum also includes an award of attorneys fees in the amount of \$15,295.00 (**Fifteen Thousand Two Hundred Ninety Five Dollars**). The undersigned arbitrators find that they have the authority to award attorneys' fees pursuant to A.R.S. §44-2001.
2. Interest at the rate of 10% per annum is awarded on the above stated sum from and inclusive of April 3, 2000 to and inclusive of the date this award is paid in full.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 300.00

#### **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 is Capital West Investment Group, Inc.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,500.00

#### **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:

One (1) Pre-hearing session with Panel x \$1,125.00 = \$1,125.00

Pre-hearing conference(s):      Date                      1 session

One (1) Hearing sessions x \$1,125.00 = \$1,125.00

Hearing Date(s):              April 3, 2000              1 session

Total Forum Fees = \$2,250.00

The Arbitration Panel has assessed \$1,125.00 of the forum fees to Claimant Sacate Pellet Mills, Inc.

The Arbitration Panel has assessed \$1,125.00 of the forum fees jointly and severally to Capital West Investment Group, Inc. and Lawrence L. Kohler.

**Fee Summary**

Claimant, Sacate Pellet Mills, Inc., shall be and hereby is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= <u>\$1,125.00</u>
Total Fees	= \$1,425.00
<u>Less payments</u>	= <u>\$1,425.00</u>
Balance due to NASD Regulation, Inc.	= \$ 0.00

Respondent, Capital West Investment Group, Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= <u>\$ 0.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	= <u>\$1,425.00</u>
Balance Due NASD Regulation, Inc.	= \$3,175.00

Respondents, Capital West Investment Group, Inc. and Lawrence L. Kohler, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= <u>\$1,125.00</u>
Balance Due NASD Regulation, Inc.	= \$1,125.00

**All balances are due to NASD Regulation, Inc.**

Dated:

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Jeffrey B. Messing, Esq.  
Public Arbitrator, Presiding Chair

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Gregory W. Dawson, Esq.  
Public Arbitrator

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Robert F. Custer  
Industry Arbitrator

NASD Regulation, Inc. Office of Dispute Resolution  
 Arbitration No. 99-01672  
 Award Page 5 of 5

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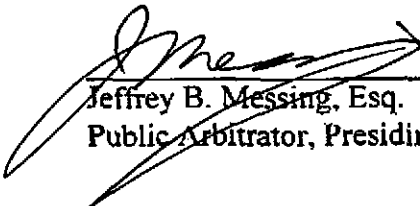
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4/14/2000

  
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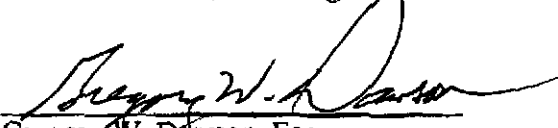
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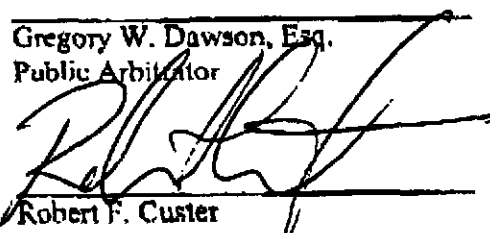
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