

**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

Case Number: 09-06962

ADKO Investors, LLC  
Alan C. Dadd as Trustee of the Alan C. Dadd  
Family Trust  
Merle Allen  
Bar D Ranch, Inc.  
John Beaupre, individually, and as the Sole  
Member of J. Beaupre Neilsen Complex LLP  
Lawrence Berg  
Henry Bradley Burns  
Lou Ann Burns  
Deanna Clotfelter as Trustee of the Deanna  
Clotfelter Revocable Living Trust  
James C. DeMartini  
Ruth T. DeMartini  
Richard Faulkner  
Sudie Faulkner  
Sharon Fritzer  
Kimber Heineman  
Hardy Hodges  
Kenneth Hofmeister  
Mary Lou Hofmeister  
Jimmy and Helen King as Trustees of the King  
Family Revocable Trust  
Jarod Kuntz  
Pamela Kuntz  
Mary Jensen as Trustee of the Mary A. Jensen  
Funnel Trust  
Bruce Norman  
Pamela Panther as Trustee of the Panther Family  
Recovable Trust  
Donald Reutlinger and Janell Reutlinger,  
individually, and Donald Reutlinger as President of  
Bar D Ranch, Inc.  
David Robertson, individually, and as Managing  
Member of ADKO Investors, LLC  
Sharon Beaupre as the Sole Member of S.  
Beaupre Neilsen Complex LLP  
Leslie Schiffers  
Glenn Spaur  
Randall Stotz

vs.

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Respondent  
CapWest Securities, Inc.

Hearing Site: Denver, Colorado

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Nature of the Dispute: Customers vs. Member

**REPRESENTATION OF PARTIES**

Claimants ADKO Investors, LLC, Alan C. Dadd as Trustee of the Alan C. Dadd Family Trust, Merle Allen, Bar D Ranch, Inc., John Beaupre, individually, and as the Sole Member of J. Beaupre Neilsen Complex LLP, Lawrence Berg, Henry Bradley Burns, Lou Ann Burns, Deanna Clotfelter as Trustee of the Deanna Clotfelter Revocable Living Trust, James C. DeMartini, Ruth T. DeMartini, Richard Faulkner, Sudie Faulkner, Sharon Fritzler, Kimber Heineman, Hardy Hodges, Kenneth Hofmeister, Mary Lou Hofmeister, Jarod Kuntz, Pamela Kuntz, Mary Jensen as Trustee of the Mary A. Jensen Funnel Trust, Bruce Norman, Pamela Panther as Trustee of the Panther Family Recovable Trust, Donald Reutlinger and Janell Reutlinger, individually, and Donald Reutlinger as President of Bar D Ranch, Inc., David Robertson, individually, and as Managing Member of ADKO Investors, LLC, Sharon Beaupre as the Sole Member of S. Beaupre Neilsen Complex LLP, Leslie Schiffers, and Glenn Spaur, hereinafter collectively referred to as "Claimants": **Scott L. Silver, Esq.**, Blum & Silver, LLP, Coral Springs, FL.

**Scott L. Silver, Esq.** also represented Claimants Jimmy and Helen King as Trustees of the King Family Revocable Trust and Randall Stotz.

Respondent CapWest Securities, Inc., hereinafter referred to as "Respondent": H Thomas Fehn, Esq., Fields, Fehn & Sherwin, Los Angeles, CA.

**CASE INFORMATION**

Statement of Claim filed on or about: December 11, 2009.

Amended Statement of Claim filed on or about: February 18, 2010.

Second Amended Statement of Claim filed on or about: June 1, 2010.

Corrected Second Amended Statement of Claim filed on or about: June 1, 2010.

David Robertson, individually, and as Managing Member of ADKO Investors, LLC signed the Submission Agreement: December 3, 2009.

Alan C. Dadd as Trustee of the Alan C. Dadd Family Trust signed the Submission Agreement: April 2, 2010.

Merle Allen signed the Submission Agreement: November 25, 2009.

John Beaupre, individually, and as the Sole Member of J. Beaupre Neilsen Complex LLP signed the Submission Agreement: December 8, 2009.

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Lawrence Berg signed the Submission Agreement: November 24, 2009.

Henry Bradley Burns signed the Submission Agreement: November 27, 2009.

Lou Ann Burns signed the Submission Agreement: November 27, 2009.

Deanna Clotfelter as Trustee of the Deanna Clotfelter Revocable Living Trust signed the Submission Agreement: November 23, 2009.

James C. DeMartini signed the Submission Agreement: February 10, 2010.

Ruth T. DeMartini signed the Submission Agreement: February 10, 2010.

Richard Faulkner signed the Submission Agreement: November 30, 2009.

Sudie Faulkner signed the Submission Agreement: November 30, 2009.

Sharon Fritzler signed the Submission Agreement: November 30, 2009.

Kimber Heineman signed the Submission Agreement: February 5, 2010.

Hardy Hodges signed the Submission Agreement: April 23, 2010.

Kenneth Hofmeister signed the Submission Agreement: November 23, 2009.

Mary Lou Hofmeister signed the Submission Agreement: November 23, 2009.

Jimmy and Helen King as Trustees of the King Family Revocable Trust signed the Submission Agreement: November 24, 2009.

Jarod Kuntz signed the Submission Agreement: November 30, 2009.

Pamela Kuntz signed the Submission Agreement: November 30, 2009.

Mary Jensen as Trustee of the Mary A. Jensen Funnel Trust signed the Submission Agreement: February 9, 2010.

Bruce Norman signed the Submission Agreement: February 6, 2010.

Pamela Panther as Trustee of the Panther Family Recovable Trust signed the Submission Agreement: December 4, 2009.

Donald Reutlinger and Janell Reutlinger, individually, and Donald Reutlinger as President of Bar D Ranch, Inc. signed the Submission Agreement: November 24, 2009.

Sharon Beaupre as the Sole Member of S. Beaupre Neilsen Complex LLP signed the Submission Agreement: December 8, 2009.

Leslie Schiffers signed the Submission Agreement: November 24, 2009.

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Glenn Spaur signed the Submission Agreement: November 24, 2009.

Randall Stotz signed the Submission Agreement: November 25, 2009.

Statement of Answer to the Amended Statement of Claim filed by Respondent on or about: April 30, 2010.

CapWest Securities, Inc. signed the Submission Agreement: December 28, 2009.

### **CASE SUMMARY**

Claimants asserted the following causes of action: 1) failure to treat the Claimants in a just and equitable manner; 2) breach of contract; 3) breach of fiduciary duty; 4) negligence, negligent misrepresentations and omissions; 5) violation of North Dakota's Securities Act of 1951; 6) violation of South Dakota's Uniform Securities Act of 2002; 7) violation of Texas's Securities Act; 8) violation of the Minnesota Securities Act; 9) violation of the Colorado Securities Act; 10) violation of Nevada's Securities (Uniform Act); 11) violation of the Oklahoma Uniform Securities Act of 2004; 12) violation of the Indiana Uniform Securities Act; and 13) violation of the Securities Act of Washington. The causes of action relate to Claimants' investments in Provident Royalties LLC, Medical Capital Corporation, and DBSI, Inc.

The Amended Statement of Claim named James C. DeMartini, Ruth T. DeMartini, Kimber Heineman, Mary Jensen as Trustee of the Mary A. Jensen Funnel Trust, and Bruce Norman as additional Claimants.

The Second Amended Statement of Claim named Hardy Hodges and Alan C. Dadd as Trustee of the Alan C. Dadd Family Trust as additional Claimants.

Unless specifically admitted in its Answer to the Amended Statement of Claim, Respondent denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, the named Claimants requested:

1. Damages based on fairness and equity;
2. Full rescission of all allegedly unsuitable securities sold to Claimants, including the services in accordance with those industry rules, regulations, customs and practices, plus prejudgment interest on all such damages at the statutory rate;
3. Compensatory damages in excess of \$6,055,763.00, plus prejudgment interest on all such damages at the statutory rate;
4. Punitive damages;
5. Costs and attorneys' fees pursuant to North Dakota's Securities Act of 1951, Section 10-4-17;
6. Costs and attorneys' fees pursuant to South Dakota's Uniform Securities Act of 2002, Section 47-31B-509;
7. Costs and attorneys' fees pursuant to Texas's Securities Act, Article 581-33;
8. Costs and attorneys' fees pursuant to Minnesota Uniform Securities Act, Section

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80A.76;

9. Costs and attorneys' fees pursuant to Colorado Uniform Securities Act, Section 11-51-604;
10. Costs and attorneys' fees pursuant to Nevada's Securities (Uniform Act), Section 90.660;
11. Costs and attorneys' fees pursuant to the Oklahoma Uniform Securities Act of 2004, Section 1-509;
12. Costs and attorneys' fees pursuant to the Indiana Uniform Securities Act, Section 23-19-5-9; and
13. Costs and attorneys' fees pursuant to the Securities Act of Washington, Section 21.20.430.

In the Amended Statement of Claim, the named Claimants requested:

1. Damages based on fairness and equity;
2. Full rescission of all allegedly unsuitable securities sold to Claimants, including the services in accordance with those industry rules, regulations, customs and practices, plus prejudgment interest on all such damages at the statutory rate;
3. Compensatory damages in excess of \$7,645,763.00, plus prejudgment interest on all such damages at the statutory rate;
4. Punitive damages;
5. Costs and attorneys' fees pursuant to North Dakota's Securities Act of 1951, Section 10-4-17;
6. Costs and attorneys' fees pursuant to South Dakota's Uniform Securities Act of 2002, Section 47-31B-509;
7. Costs and attorneys' fees pursuant to Texas's Securities Act, Article 581-33;
8. Costs and attorneys' fees pursuant to Minnesota Uniform Securities Act, Section 80A.76;
9. Costs and attorneys' fees pursuant to Colorado Uniform Securities Act, Section 11-51-604;
10. Costs and attorneys' fees pursuant to Nevada's Securities (Uniform Act), Section 90.660;
11. Costs and attorneys' fees pursuant to the Oklahoma Uniform Securities Act of 2004, Section 1-509;
12. Costs and attorneys' fees pursuant to the Indiana Uniform Securities Act, Section 23-19-5-9; and
13. Costs and attorneys' fees pursuant to the Securities Act of Washington, Section 21.20.430.

In the Second Amended Statement of Claim and Corrected Second Amended Statement of Claim, Claimants requested:

1. Damages based on fairness and equity;
2. Full rescission of all allegedly unsuitable securities sold to Claimants, including the services in accordance with those industry rules, regulations, customs and practices, plus prejudgment interest on all such damages as the statutory rate;
3. Compensatory damages in excess of \$8,300,763.00, plus prejudgment interest on all such damages at the statutory rate;
4. Punitive damages;
5. Costs and attorneys' fees pursuant to North Dakota's Securities Act of 1951, Section 10-4-17;

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6. Costs and attorneys' fees pursuant to South Dakota's Uniform Securities Act of 2002, Section 47-31B-509;
7. Costs and attorneys' fees pursuant to Texas's Securities Act, Article 581-33;
8. Costs and attorneys' fees pursuant to Minnesota Uniform Securities Act, Section 80A.76;
9. Costs and attorneys' fees pursuant to the New Mexico Uniform Securities Act, Section 58-13C-509;
10. Costs and attorneys' fees pursuant to the Colorado Uniform Securities Act, Section 11-51-604;
11. Costs and attorneys' fees pursuant to the Securities Act of Nebraska, Section 8-1118;
12. Costs and attorneys' fees pursuant to Nevada's Securities (Uniform Act), Section 90.660;
13. Costs and attorneys' fees pursuant to the Oklahoma Uniform Securities Act of 2004, Section 1-509;
14. Costs and attorneys' fees pursuant to the Indiana Uniform Securities Act, Section 23-19-5-9; and
15. Costs and attorneys' fees pursuant to the Securities Act of Washington, Section 21.20.430.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On March 10, 2010, Claimant Randall Stotz dismissed his claims against Respondent without prejudice. The matter proceeded without said Claimant.

On May 6, 2010, FINRA Dispute Resolution received an Unopposed Motion to File the Second Amended Statement of Claim naming Hardy Hodges and Alan C. Dadd as Trustee of the Alan C. Dadd Family Trust as additional Claimants. As part of the Unopposed Motion to File the Second Amended Statement of Claim, Jimmy and Helen King as Trustees of the King Family Revocable Trust withdrew their claims. On May 20, 2010, FINRA Dispute Resolution received a Corrected Second Amended Statement of Claim removing Randall Stotz as a party listed in the caption. Respondent did not file a response in opposition. On June 1, 2010, the Panel issued an Order granting the motion. The Panel determined that the operant complaint is the Corrected Second Amended Statement of Claim dated May 19, 2010.

On March 28, 2011, Claimants filed a motion for sanctions against Respondent and to preclude Respondent from introducing any documents or calling any witnesses at the evidentiary hearing. On April 4, 2011, Respondent filed a response to Claimants' motion. On April 7, 2011, Claimants filed a reply to Respondent's response to Claimants' motion for sanctions and to preclude. Claimants' Reply further requested the Panel strike Respondent's Answer and affirmative defenses pursuant to Rules 12511 and 12212 of the Code of Arbitration Procedure (the "Code"). On April 12, 2011, Respondent filed a supplemental response to Claimants' motion for sanctions and to preclude. On April 14, 2011, Claimants filed a reply to Respondent's supplemental response.

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On September 23, 2011, the Panel conducted a hearing to consider Claimants' motion for sanctions and to preclude. Respondent did not appear. The Panel determined that an attempt was made by the conference operator to contact Mr. H Thomas Fehn, counsel for Respondent, that Mr. Fehn had been notified by FINRA of the date and time of the hearing, and that the operator was unable to reach Mr. Fehn at the phone number provided. On September 28, 2011, the Panel issued an Order granting Claimants' motion for sanctions and to preclude. Under authority of FINRA Rules 12212 and 12511, the Panel struck Respondent's Answer to the Statement of Claim and entered an award in favor of Claimants subject to further submissions by Claimants of affidavits of damages, attorneys' fees and costs, and responses thereto. The Panel preserved the scheduled hearing dates pending receipt of the requested submissions.

The Panel notes that copies of Claimants' Affidavit of Damages and Affidavit of Attorneys' Fees and Costs were provided to Respondent with stipulation that Respondent would have ten (10) business days to reply. Respondent did not file a response.

The Panel has 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 and all submissions regarding Claimants' motion for sanctions and to preclude, including Claimants' Affidavit of Damages and Affidavit of Attorneys' Fees and Costs dated October 25, 2011, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimants the sum of \$7,925,763.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimants the sum of \$1,188,863.00 in attorneys' fees.
3. Respondent is liable for and shall pay to Claimants the sum of \$5,840.90 in costs.
4. The Panel awarded the attorneys' fees and costs pursuant to the following authorities: North Dakota Securities Act of 1951, Section 10-4-17; South Dakota Uniform Securities Act of 2002, Section 47-31B-509; Texas Securities Act, Article 581-33; Minnesota Uniform Securities Act, Section 80A.76; New Mexico Uniform Securities Act, Section 58-13C-509; Colorado Uniform Securities Act, Section 11-51-604; Securities Act of Nebraska, Section 8-1118; Nevada Securities (Uniform Act), Section 90.660; Oklahoma Uniform Securities Act of 2004, Section 1-509; Indiana Uniform Securities Act, Section 23-19-5-9; and Securities Act of Washington, Section 21.20.430.
5. Respondent is liable for and shall pay to Claimants interest on the sum of \$7,925,763.00 in compensatory damages, the sum of \$1,188,863.00 in attorneys' fees, and the sum of \$5,840.90 in costs at the statutory rate of 8% per annum from the date of service of the Award until the date the Award is paid in full.

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6. The hearing dates of January 31, 2012, February 1, 2012, February 2, 2012, and February 3, 2012 are canceled.
7. 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

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial claim filing fee	= \$1,800.00
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*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### 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(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, CapWest Securities, Inc. is assessed the following:

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

#### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 3-6, 2011 and May 9-13, 2011, adjournment by the parties	= \$1,200.00
August 8-10, 2011, adjournment by the parties	= WAIVED

The Panel assessed \$1,200.00 of the adjournment fees to Respondent.

#### Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

Three (3) Decisions on discovery-related motions on the papers with (1) one arbitrator @ \$200.00	= \$ 600.00
Claimants submitted (3) discovery-related motions	

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Total Discovery-Related Motion Fees	= \$ 600.00
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The Panel has assessed \$600.00 of the discovery-related motion fees to Respondent.



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**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. 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:

Five (5) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$6,000.00
Pre-hearing conferences: May 13, 2010	1 session
May 3, 2011	1 session
May 24, 2011	1 session
July 18, 2011	1 session
September 23, 2011	1 session
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Total Hearing Session Fees	= \$6,000.00

The Panel has assessed \$6,000.00 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

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**ARBITRATION PANEL**

Thaddeus J. Tecza, Ph.D	-	Public Arbitrator, Presiding Chairperson
John Fleming Kelly	-	Public Arbitrator
Martin M. Berliner	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

**Concurring Arbitrators' Signatures**

*Thaddeus J. Tecza, Ph.D.*  
 Thaddeus J. Tecza, Ph.D  
 Public Arbitrator, Presiding Chairperson

*1/3/12*  
 Signature Date

\_\_\_\_\_  
 John Fleming Kelly  
 Public Arbitrator

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

\_\_\_\_\_  
 Martin M. Berliner  
 Non-Public Arbitrator

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

*January 13, 2012*  
 Date of Service (For FINRA Dispute Resolution office use only)

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

  
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John Fleming Kelly  
Public Arbitrator

1-12-12  
\_\_\_\_\_  
Signature Date

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Martin M. Berliner  
Non-Public Arbitrator

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

January 13, 2012  
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Public Arbitrator, Presiding Chairperson

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

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John Fleming Kelly  
Public Arbitrator

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

  
\_\_\_\_\_  
Martin M. Berliner  
Non-Public Arbitrator

01/04/12  
\_\_\_\_\_  
Signature Date

January 13, 2012  
\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution office use only)