

TUESDAY, MARCH 24, 2020

Appeals panel reverses OC judge in \$8.2M attorney fee dispute

By Nicole Tyau

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A state Court of Appeal panel unanimously reversed an Orange County Superior Court judge's ruling that attorneys representing shareholders in a years-long court battle could not recover more than \$8.2 million in fees.

Jeffrey H. Reeves, a senior attorney at Theodora Oringer PC, represented the majority shareholders of Bio-Nutritional Research Group, which makes Powercrunch bars, in a lawsuit brought by minority shareholders who wanted a bigger share, he said. At the conclusion of the case in 2018, Judge Ronald L. Bauer ruled Reeves and his clients couldn't claim attorney fees because there was no clear prevailing party.

"We were stunned," Reeves said.

"We thought immediately, right then on the spot, that the ruling was erroneous, and we decided right away that we were going to have to go to the court of appeal."

The appellate court's ruling, handed down Thursday, found that Reeves and his clients in fact were entitled to attorney fees. Retired Orange County Superior Court judge Kim Garlin Dunning, sitting pro tem on the appellate panel, wrote the court's decision. The trial judge must determine the majority shareholders are the prevailing party, she wrote. *Abregov v. Lawrence*, G056866 (Cal. App., 4th Dist. March 19, 2020) (unpublished)

The majority shareholders voluntarily eliminated some of their shares to appease some of the minority shareholders' over issues claimed in the lawsuit, Reeves explained.

Bauer used this to find some amount of victory for the plaintiffs, which led to the mixed ruling, Dunning noted in her decision. Dunning cited *de La Cuesta v. Benham*, which states that while trial courts have the ability to determine the extent of a victory, some cases require the court to weigh how disparate the victories are.

"Thus, even considering the share cancellation as a litigation gain for plaintiffs, this achievement was lost as a result of plaintiffs' appeal," Dunning wrote. "Defendants' litigation achievements, on the other hand, are — to use *de La Cuesta's* words — so 'lopsided' that on remand the trial court must recognize them as the prevailing parties in the action on the shareholder agreement."

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