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Civil Litigation

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Jan. 30, 2018

## Shareholders lose lawsuit against nutrition technology company

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BAUER

SANTA ANA -- An Orange County judge has ruled in favor of the defense in a breach of fiduciary duty lawsuit brought by shareholders against a pioneering nutrition technology company.

The tentative issued Friday by Superior Court Judge Ronald L. Bauer means Bio-Nutritional Research Group won't pay anything to plaintiffs who argued they lost money because the company's executives illegally backdated stock. It also sets the stage for a battle over attorney fees. Gibson Dunn & Crutcher LLP worked the case for more than four years, and Bauer noted that their experts' fees "rung the bell with the highest expert fees ever reported in this court, by far." They totaled more than \$300,000, according to testimony.

Jeffrey H. Reeves, who recently left Gibson Dunn for Umberg Zipser LLP, represented majority shareholders,

including CEO Kevin Lawrence, a former world champion bodybuilder. Lauren D. Friedman represented the company as its general counsel during the second phase of the trial after serving as second chair to Reeves in the first phase of the trial in 2016, which established the validity of the shareholder agreement. Linda D. Lam worked with Reeves in the first phase while at Gibson Dunn, then again in the second phase as founding partner of Aviso Legal Group LLP.

John B. Taylor of Cadden & Fuller LLP in Irvine represented the plaintiffs: Aslan Abregrov, Craig Parrino and Pierre Ngo, who were seed investors in the company. He could not be reached for comment on Monday.

Reeves said his clients are relieved and gratified by the court's ruling, but understand it's not final; the parties still could argue objections.

The lawsuit accused Lawrence, Curtis Steinhaus and other major shareholders of breaching their fiduciary duty by retroactively issuing shares to themselves. Reeves acknowledged the plaintiffs' ownership was diluted from 5 percent to .36 percent but argued it was the result of the common -- and legal -- practice of equity incentive compensation. The company brought the plaintiffs' ownership up to 2.689 percent after litigation ensued, which translates to \$5.3 million for each plaintiff's \$50,000 investment.

Bauer's seven-page minute order, issued nearly two months after closing arguments, cited that return and said, "In view of their limited (non?) participation in the business, it is very difficult to see how these plaintiffs have been mistreated."

He noted that the current stock allocation and 2.689 percent ownership "is consistent with the law and with the corporate mandates."

"This dilution to approximately one-half of their original interest may bring displeasure, but it is not illegal or improper," Bauer wrote. "When the plaintiffs purchased their interests, they knew that several hundred shares were then authorized and unissued. What did they think would happen to those shares?"

Bauer criticized the plaintiffs for complaining about company dealings years later. "The record does not reflect that the plaintiffs squawked about these dealings at the time," Bauer wrote. "Their present attitude seems to be an effort to mindlessly lengthen the list of the defendants' alleged errors, even at the expense of the facts."

Much of the trouble began when the company's former corporate counsel, Alan G. Novodor, prepared a shareholder agreement that mistakingly referred to it as a "close corporation" in conflict with the company's intentions. The plaintiffs sued him for professional negligence as a derivative claim on behalf of the company; the claim was settled before trial. *Abregov et al., v. Bio-Nutritional Research Group, Inc. et al.*, 2013-00638650 (O.C. Super. Ct., filed March 19, 2013).

Bauer's ruling dismissed plaintiffs' concerns about the timing of Novodor's documents regarding the corporatization. He said the company's patience with Novodor was "laudable" and that his work was valued and not always slow. "Wouldn't the lawyers on this case wish that all their clients were so understanding?" Bauer wrote.

"Plaintiffs' counsel has adroitly spun these delays into a tale of fraud and breach of fiduciary duty and other skullduggery, but there is no there there," Bauer wrote. "In summary, the undeniable delays are merely a side show. They did not alter or affect the legitimacy of anything done by the defendants or BNRG."

Bauer also said expert opinions established that Lawrence and Steinhouse were fairly compensated.

Robert J. Jackson Jr., a professor at Columbia Law School and President Donald J. Trump's nominee for the Securities and Exchange Commission, testified for the defense. Barbara C. Luna with White, Zuckerman, Warsawsky, Luna & Hunt LLP testified for the defense.

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