

No. 37187-1-II

**COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON**

---

ALPACAS OF AMERICA, LLC,

Appellant,

vs.

JAMES AYERS

Respondent

FILED  
COURT OF APPEALS  
DIVISION II  
09 JUN 19 PM 2:28  
STATE OF WASHINGTON  
BY Deputy

---

JAMES AYERS, MOTION ON THE MERITS

---

JAMES AYERS  
P.O. BOX 322  
PENROSE, COLORADO 81240

719-429-7923

*PRO SE* RESPONDENT

**I. ISSUES PRESENTED FOR REVIEW**

- A. Did Plaintiff and Appellant Alpacas of America concealment of seven Sales Contracts to trial court constitute contemptible conduct with bad faith intention's in it's commencement in Thurston County Superior Court, Washington and not commencement Snohomish County Superior Court, Washington, with it's filing action with a boarding/breeding contract and not seven Sales Contract for its claims? A boarding/breeding amount that was petty, and which was never billed to Defendant or Respondent James Ayers or produced to trial court.
- B. Is a "Scrivener Error, mistaken draftsmanship" on the face of the award grounds for a statutory review?

## **II. STATEMENT OF THE CASE**

Alpaca of America Appellant and Respondent James Ayers entered into seven Sales Contracts (see Appendix 1) with Promissory Notes (see Appendix 2) January 19, 2002. Alpacas of America drafted all seven Sales Contract, with their ranch address 25525 Dahl Road Arlington Snohomish County, Washington (see Appendix 3), the total amount Of these Sales Contracts was \$172,000.00, with a down payment of \$43,000.00, leaving a balance of \$129,000.00 (see Appendix 4) secured by above reference Promissory Note. Within Sales Contract is an arbitration clause, “should any dispute arise...”

Appellant and Respondent made presentations at an arbitration on October 2, 2007, (see appendix 5), the face of the award had a “Scrivener Error, mistaken draftsmanship, a corrected award was issued November 20, 2007 (see Appendix 6). Trial Court confirmed award on December 14 2007 (see Appendix 7) Alpacas of America submitted to Trial Court a Stud Service Contract to hold Respondent in Thurston County Superior Court (see appendix 8).

### III. Argument

Trial Court generally must admit evidence that tends to make existence of material fact more or less probable in actions. Alpacas of America has commenced action that should be considered contemptible conduct with bad faith intentions in it's concealment of seven Sales Contracts with seven Promissory Notes to Trial Court. Evidence that reasonably tends to establish the theory of a part is "relevant". Johnson v. Weyerhaeuser Co., 930 P.2d 331, 84 Wn. App. 713,953,2d. 800.

Arbitrator's made a "Scrivener Error a mistaken draftsmanship" on the Face of the award not an error of law. In the absence of an error of law on the face of the award, arbitrator's award will not be vacated or modified. Davidson v.Hensen, 954 P.2d 1327, 135 Wn.2d 112, (1998). Alpacas of America and James Ayers agreed to arbitrate any disputes by entering into seven Sales Contracts with Promissory Notes which where all drafted by Alpacas of America. Arbitrator's powers are governed by agreement to to arbitrate. Anderson v. Farmers Ins. Co. of Washington, 923 P.2d 713, 83 Wn. App. 725 (1997).

Once a party moves to compel arbitration of a particular dispute and the Trial Court determines that the parties have agreed to arbitrate that dispute, the trial court must order the parties to proceed to arbitration save upon such grounds as exist at law or in equity for the revocation of any contract. Kamaya Co. Ltd. v. American Property Consultants, Ltd., 137 Wn. 2d 1012, 91 Wn. App.703 (1998).

Waiver of the right to arbitrate under a contract occurs only where a Party's conduct is inconsistent with any intent but to forgo arbitration. Civil Service Com'n of City of Kelso, 969 P.2d 474, 137 Wn. 2d 166 (1999). Contractual dispute is arbitrable unless it can be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute, Alpacas of America draft the arbitration clause in all seven Sales Contracts with Promissory Notes. Kamaya Co., Ltd v. American Property Consultants, Ltd., 137 Wn. 2d 1012, 959 P.2d 1140, 91 Wn. App.103 (1999). In drafting the Exchange Contract, Alpacas of America's Guarantee, "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED..." Is substantive unconscionability and involves "those

cases where a clause or term in the contract is alleged to be one-sided or overly harsh...” Nelson v. McGoldrick, 127 Wn. 2d 124, 131, 896 P.2d 1258 (1995)(quoting Schroeder v. Fageol Motors, Inc. 86 Wn. 2d 256, 260, 544, P.2d 20 (1975).

Trial court review of arbitration award is confined to question of whether any statutory grounds for vacation exist, and burden showing that such grounds exist is on the party seeking to vacate award, the Trial Court found no statutory grounds for vacations. Pegasus Const. v. Turner Co., 929 P.2d 1200, 84 Wn. App 744 (1997), RCW 7.04.150, RCW 7.04.160(3), RCW 7.04.170.

Trial Court has limited power to confirm, vacate, modify or correct arbitration award. Davidson v. Hensen, 135 Wn 2d 112, 933 P.2d 1050, 85 Wn. App. 187. Appellant review of trial court’s confirmation of arbitration award is limited to review statutory grounds for vacation, modification, or correction of arbitration award, no statutory grounds exist, only a “Scrivener Error, mistaken draftsmanship” on the face of the award. Bongino v. Moss, 969 P.2d 1118, 93 Wn. App.654 (1999), Equity Group, Inc v. Hidden, 943 P.2d 1167, 88 Wn. App. 148 (1997).

Statute governing voluntary arbitration pursuant to contract provides for no judicial review. In re Smith-Barlett, 976 P2d. 173, 95 Wn. App. 633 (1999), RCW 7.04.010.

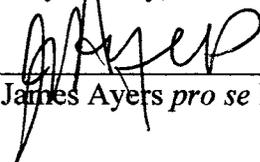
#### IV. CONCLUSION WITH RELIEF

Respondent James Ayers precise relief sought is a Motion to Affirm trial courts confirmation of arbitration award, and judgment, RAP 18.14 (e) (1) (a) (b).

Appellant Alpacas of America has clearly blind-sided Trial Court with its concealment of seven Sales Contracts with promissory notes all drafted by Appellant in its action, now it is asking this Court to review and reverse a typographical error on the face of an arbitration award, which is not an error of settled law, a frivolous appeal, intended to delay Trial Court, a Violation RAP 18.9 (a). Alpacas of America's Attorney Ms. Stephanie M.R. Bird, WSBA #36859, a junior partner of the Cushman Law, P.S., was not Appellants counsel during arbitration, and appear to be getting her "feet wet" in Appeals Court Division II, at the Courts and Respondents expense.

James Ayers *pro se* respectfully asks this Court to Affirm the court below, to award Attorney Fees and Expenses RAP 18.1 (a), and impose Sanctions for Violation RAP 18.9 (a), filing a frivolous appeal.

Respectfully Submitted this 17<sup>th</sup> day of May, 2008.

  
\_\_\_\_\_  
James Ayers *pro se* Respondent

## **V. APPENDIX**

1. Sales contract dated January 19, 2002
2. Promissory Note dated February 22, 2002
3. Alpaca Registry Suri SUPER NOVA OF PERU D550
4. Statement of Cost of Seven Alpacas all dated January 19/2002
5. Arbitration Award dated October 9, 2007
6. Corrected Arbitration Award dated November 14, 2007
7. Verbatim Report Of Proceedings dated December 14, 2007  
Trial court confirmation of award and cost
8. Replacement Stud Service Contract dated January 26, 2005

## TABLE OF AUTHORITIES

### Table of Cases

<u>Johnson v. Weyerhaeuser Co.</u> , 930 P.2d 331, 84 Wn. 2d 713,953,800 (1968).....	3
<u>Davidson v. Hensen</u> , 954 P.2d 1327, 135 Wn. 2d 112 (1998).....	3
<u>Anderson v. Farmers Ins. Co. of Washington</u> , 923 P.2d 713, 83 Wn. App. 725 (1997).....	3
<u>Kamaya Co. Ltd v. America Property Consultants,Ltd.</u> 137 Wn.2d 1012, 91 Wn. App 703 (1998).....	4
<u>Civil Service Com'n. of City of Kelso</u> , 137 Wn. 2d 166, 969 P.2d 474 (1999).....	4
<u>Kamaya Co. Ltd. V. America Property Consultants Ltd.</u> , 137 Wn 2d 1012, 959 P.2d 1140, 91 Wn. App. 103 (1999).....	4
<u>Nelson v. Mcgoldrick</u> , 127Wn. 2d 124,131,896 P2d 1258 (1995).....	5
(quoting <u>Schroeder v.Fageol Motors,Inc.</u> , 86 Wn. 2d 256 260 544, P.2d 20 (1975).....	5
<u>Pegasus Const. Corp v. Turner Co.</u> , 929 P.2d 1200, 84 Wn. 744 (1997).....	5

<u>Davidson v. Hensen</u> , 135 Wn.2d 112, 933, P.2d 1050, 85 Wn. App. 187	
(1997).....	5
<u>Bongino v. Moss</u> , 969P.2d 1118, 93 Wn. App. 654	
(1999).....	5
<u>Equity Group, Inc v. Hidden</u> , 943 P.2d 1167, 88 Wn. App.148	
(1997).....	5
<u>Smith-Barlett In re</u> , 976 P2d 173, 95 Wn. App. 633	
(1999).....	6

**Statutes**

RCW 7.04.010.....	6
RCW 7.04.150.....	5
RCW 7.04.160(3).....	5
RCW 7.04.170.....	5
RAP 18.4 (e)(1).....	7
RAP 18.1 (a).....	7
RAP 18.9 (c)(2).....	7

# ALPACAS OF AMERICA

25525 DAHL ROAD ARLINGTON, WASHINGTON 98223

TELEPHONE: (360) 629-6395 FAX: (360) 629-6396 E-MAIL: alpaca@alpaca1.com WEB: alpaca@alpaca1.com

## SALES CONTRACT

THIS CONTRACT is entered into by and between ALPACAS OF AMERICA, LLC (hereinafter referred to as "Seller") and JAMES & Patricia Ayers (hereinafter referred to as "Buyer").

WHEREAS, the Seller is the owner of the following alpaca(s):

ID#	NAME	DOB	SEX	BREED	COLOR	SIRE	DAM	BLOOD CASE
D550	SUPER NOVA OF PERU D550 AOA	08/04/00	F	SURI	BEIGE	P6050	P5114	AL24194

WHEREAS, the Seller agrees to sell and the Buyer agrees to purchase the above-listed alpaca(s).

WHEREAS, the parties wish to set out in writing the terms of the Sales Contract by which the alpaca(s) will be purchased.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

### PURCHASE PRICE:

Purchase price will be as follows:

SUPER NOVA OF PERU D550 AOA: \$ 21,500.00

Due upon signing: \$ 5,375.00

Interest rate 5.75 %.

TOTAL PRINCIPLE: \$ 16,125.00

Amount financed: \$ 16,125.00

Forty-eight monthly payments, including interest and principle will be in the amount of \$ 376.85 and due on or before the 15th of each month beginning February 15, 2002. Balance may be paid in full at any time with out any prepayment penalty. At the option of the Seller a late payment fee of not more than \$100. will be subject to the Buyer for any late payment.

**GUARANTEE:** Each maiden female alpaca(s) is sold guaranteed to be anatomically correct in the reproductive system at maturity and capable of becoming pregnant and producing a live cria when bred to a herd sire owned by the Seller. Warranty ends after the first birth. The Seller is not liable for circumstances beyond their control causing infertility while the alpaca(s) is in the possession of the Buyer. If abuse or neglect does occur on the part of the Buyer resulting in a lost pregnancy, this will nullify all warranties. All maiden female alpaca(s) over six months of age come with a no-cost breeding fee for a breeding to a herd sire owned by Seller. If a maiden female alpaca(s) is not bred to a herd sire owned by the Seller at the Seller's farm, all warranties either expressed or implied are void. If by the age of thirty-six months, a maiden female has not been successfully bred the Seller has the opportunity to do a reproductive evaluation. Should the alpaca be infertile, the Seller, at his choice, will either replace the female with another of equal quality or refund the animal's purchase price. The Seller does not guarantee the above listed alpaca for the ability to reproduce a particular phenotypic or genotypic quality, including color and gender, in all future offspring. The Seller is not liable for circumstances beyond their control causing infertility while the above-listed alpaca(s) are in the possession of the Buyer.

\*A UCC-1 Financing Statement, Promissory Note and Security Agreement will be completed by the Buyer; the filing cost will be borne by the Seller.

**REGISTRATION:** ARI # for SUPER NOVA OF PERU D550 AOA is 825373.

**MICROCHIP:** Microchip # for SUPER NOVA OF PERU D550 AOA is 126646562A.

Appendix 1

INITIALS: JB RPS

INITIALS: JA PA

**OWNERSHIP:** Buyer agrees and understands that as long as there are monies due from the Buyer to the Seller on the purchase of the above-listed alpaca(s) and any future cria will remain the property of Alpacas of America until which time the balance is paid in full. As consideration for Seller financing the above-listed alpaca(s), Buyer understands and agrees that the failure of the Buyer to make payments as agreed for a period of Sixty Days (60) will cause all payments to date to become liquidated damages, up to and including Sixty Percent (60%) of the purchase price of \$ 21,500 plus interest. Monies, if any, over and above Sixty Percent (60%) will be returned to Buyer, and they will have no further claim on the above-listed alpaca(s) or any offspring produced. Any and all moneys generated from the above-listed alpaca(s) including but not limited to the sale of offspring, breeding service, insurance proceeds and the like will go against the unpaid balance owed to the Seller until the balance is paid in full.

**POSSESSION:** Liability for the alpaca(s) will be assumed by the Buyer at the fall of the auctioneer's hammer. The Buyer will be responsible for all delivery costs. The Seller shall in no way be responsible for the care, husbandry, or maintenance after January 20th, 2001. Seller will be available for free consultation and advice. Buyer will obtain full mortality insurance with no deductible for the above-listed alpaca(s) for the amount owing until balance is paid in full. Alpacas of America will be listed as the primary beneficiary until the alpaca(s) is paid for in full. A copy of this insurance policy will be provided to Alpacas of America. In the event Alpacas of America cares for any of the Buyer's alpaca(s), the Buyer assumes all risk in breeding, pregnancy, birth and cria care. Alpacas of America recommends that in addition to the required insurance coverage maintained on the above-listed alpaca(s), the Buyer also maintain coverage on any future cria. Alpacas of America agrees not to hold the Buyer liable in the event the Buyer's alpaca causes damage to alpacas or property owned by Alpacas of America. If agistment is needed it will be at \$2.00 per day per independent alpaca; which includes daily feed, board and minor medical as defined by the Seller.

**HISTORY, EXAMINATION AND HEALTH CERTIFICATE:** Health Certificate and insurance exam to bring the alpaca(s) to the Buyer's ranch in the United States will be provided by the Seller. The alpaca(s) has been examined by the Buyer (or the Buyer has been given the opportunity to do so and has declined) and by a licensed veterinarian, and they have found the alpaca(s) to be in good health. Insurance to cover said alpaca(s) will be provided by the Buyer. The information given on the alpaca(s) is as believed to be accurate and is given in good faith.

**DISPUTES:** Should any dispute arise concerning this Contract, the parties shall submit the matter to arbitration before an arbiter in Snohomish County, Washington agreed upon by both parties. The decision of the arbiter shall be binding upon the parties. The party against whom any arbitration award or decision is made shall be responsible for the arbitration costs and attorneys fees of the prevailing party.

**WARRANTY:** Buyer hereby acknowledges and warrants that they have read this entire Contract and understand its terms and contents. Buyer has the right to have this Contract reviewed by an attorney prior to signing. The parties agree that facsimile copies of signature pages are acceptable until originally signed pages are received by both the Buyer and the Seller.

IN WITNESS WHEREOF, the Parties have **HERE UNTO** set their hands.

REPRESENTING:

Randal P. Snow 2/6/02  
SELLER: Randal P. Snow Date

[Signature] 1/19/02  
BUYER: Date

BUYER: Date  
Ranch: Diley Dally RANCH  
Address: 120 Bear water Rd  
City, State, Zip: Westcliffe, CO 81522  
Telephone: (719) 371-2139  
Fax: ( )  
Owner Code:

# ALPACAS OF AMERICA

25525 DAHL ROAD ~ ARLINGTON, WASHINGTON 98223

PHONE: (360) 629-6395 FAX: (360) 629-6396 E-MAIL: alpaca@alpaca1.com WEB: www.alpaca1.com

INVESTMENT QUALITY STOCK VISITORS WELCOME

LARGEST HERD IN NORTH AMERICA

SUPPLYING BREEDING STOCK WORLDWIDE

# PAID

CK. NO. 0945  
DATE 2/22/02

## Promissory Note

Page 1 of 2

Amount of Note: \$ 16,125.00

Arlington Washington  
January 19, 2002

FOR VALUE RECEIVED, the undersigned Buyer, James S. Paterson

Alpaca (herein the "Borrowers"), promise to pay in legal tender of the United States of America to Alpacas of America, or order (herein the "Noteholder"), the principal sum of Sixteen thousand one hundred two DOLLARS

(\$ 16,125.00) with interest on the unpaid principle balance from the date of this Note until paid at the rate of 9.75 percent (9.75 %) per annum. Principal and interest shall be payable at 25525 Dahl Road, Arlington, WA 98223, or such other place as the Noteholder may designate in writing.

Payments shall be made in consecutive monthly installments of 376.85 DOLLARS (\$ 376.85) on the 1st day of each month beginning February 1, 2002.

Such monthly installments shall continue until the entire indebtedness evidenced by this Note is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable on February 15, 2006.

If any monthly installment under this Note is not paid when due, upon (30) days written notice by Noteholder, the entire principal amount outstanding and accrued interest thereon shall at once become due and payable at the option of the Noteholder. The Note holder may exercise this option to accelerate during any default by Borrowers regardless of any prior forbearance. If the borrowers default, the Note holder shall be entitled to collect all reasonable costs and expenses of collection, including but not limited to reasonable attorney's fees and litigation related expenses regardless of whether or not a lawsuit is commenced, and including such fees, costs and expenses which may be incurred at trial, on appeal, or for protecting the interest of the Note holder on account of bankruptcy or reorganization proceedings, voluntary or involuntary, in which the Borrowers are debtors.

Borrowers shall pay to the Note holder a late charge of five percent (5%) of any monthly installments not received by the Note holder within fifteen (15) days after the installment is due.

Borrowers may prepay the principal amount outstanding in whole or in part without prepayment penalty. Any partial prepayment shall be applied first against accrued interest, and second against the principal amount outstanding and shall not postpone the due date of any subsequent monthly installments or change the amount of such installments unless the Note holder shall otherwise expressly agree in writing.

Promissory Note  
Page 2 of 2

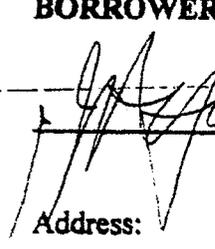
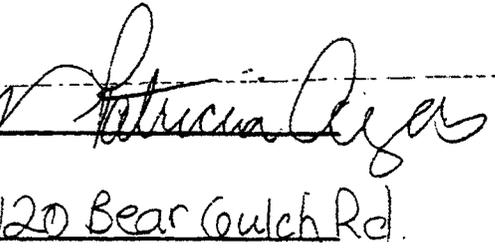
Presentment, notice of dishonor and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof, as applicable. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

Any notice to Borrowers provided for in this Note shall be given by mailing such notice by certified mail addressed to Borrowers at the property addresses stated below, or to such other address as the Borrowers may designate by notice to the Note holder. Any notice to the Note holder shall be given by mailing such notices by certified mail, return receipt requested, to the Note holder at the address stated in the first paragraph of this Note, or at such other address as may have been designated by notice of borrower.

The parties agree that this Agreement shall be controlled by the laws of the State of Washington and further agree that venue and jurisdiction of any legal action to interpret, to enforce, for damages as a result of breach of this Agreement shall be in the Superior Court in and for Snohomish County, Washington.

The indebtedness evidence by this Note is pursuant to a sales contract between the parties by which the Borrowers have contracted to purchase (Super Nova of Peru D550 AOA, ARI# 825373) 1 alpacas from the Note holder. The indebtedness evidence by this Note is secured by the Security Agreement granting the Note holder a purchase money security interest in the alpacas beginning purchased together with the UCC1 form. The parties agree that on or before February 1, 2006 or release of the purchased alpacas' registration to the Borrower, whichever is sooner, the Borrowers shall provide payment in full, including interest to the Note holder.

**BORROWERS:**

Address: 120 Bear Gulch Rd.  
Westcliffe, Co 81252

\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_



*Darlene M. Llavosink*  
Administrator

**Suri Alpaca**  
ID# 825373

Sex: Female

Date of Birth: 04 August 2000

Country of Origin: USA

Country Where Born: USA

Age

Blood Test Case #: AL24194  
126646562A

Owner at time of Conception:

WM. BARNETT, DVM  
ALPACAS & LLAMAS OF AMERICA

Owner at time of Conception:

WM. BARNETT, DVM  
ALPACAS & LLAMAS OF AMERICA

Dam Owner when cria was born

BA15  
WM. BARNETT, DVM  
ALPACAS & LLAMAS OF AMERICA

Certificate Issued: 05 July 2001

Date Registered: 04 July 2001

Some of the information contained on this  
Certificate has been provided by the  
Owner and he/she is not responsible for

SURI  
Certificate of Registration

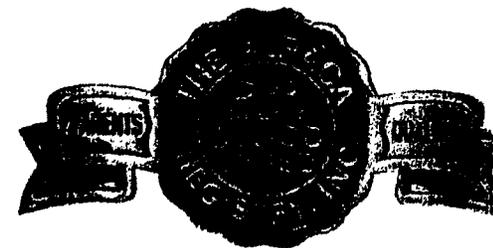
**SUPER NOVA OF PERU D550**

WM. BARNETT, DVM - BA15  
ALPACAS & LLAMAS OF AMERICA  
25525 DAHL RD  
ARLINGTON, WA 98223

4PERUVIAN METEOR 6050  
SA-R166580 -\*Peru MB

PPPERUVIAN ASTER 5114  
SA-R139208 -Peru WH

Appendix 3



# Statement

## Alpacas of America, LLC.

16641 Old Highway 99 SE  
Tenino, WA 98589

Ph: (360) 264-7585 Fax: (360) 264-7992

E-Mail: alpaca@alpaca1.com

DATE

12/31/2002

TO:

Dilley Dally Ranch  
Patricia Cunningham / James Ayers  
120 Bear Gulch Rd  
WESTCLIFFLE CO 81252

AMOUNT DUE	AMOUNT ENC.
\$23,126.94	

DATE	TRANSACTION	AMOUNT	BALANCE
12/31/2001	Balance forward		0.00
01/19/2002	INV #10843 - Purchase of F0256 Allegra Simpatica	18,500.00	18,500.00
01/19/2002	INV #10844 - Purchase of D550 Super Nova	21,500.00	40,000.00
01/19/2002	INV #10845 - Purchase of D283 Rosa Fina	30,500.00	70,500.00
01/19/2002	INV #10846 - Purchase of F0051 Granita	23,000.00	93,500.00
01/19/2002	INV #10847 - Purchase of D390 Iglesia	42,000.00	135,500.00
01/19/2002	INV #10848 - Purchase of F0251 Teresita	20,500.00	156,000.00
01/19/2002	INV #10849 - Purchase of D446 Negra Valorosa	16,000.00	172,000.00
02/13/2002	PMT #5194 - Signing Pymt INV 10843-48 [Celebrity Sales]	-43,000.00	129,000.00
02/22/2002	PMT #0945 - PD IN FULL- F0256,D550,D283,D390,F0251	-99,750.00	29,250.00
02/22/2002	PMT #0948 - Pmt on F0051,D446 INV 10846/49	-543.44	28,706.56
03/25/2002	PMT #4858 - MAR PMT ON: F0051/D446 INV 10846/49	-546.04	28,160.52
04/19/2002	PMT #4874 - APR PMT ON: F0051, D446	-548.65	27,611.87
05/24/2002	PMT #1001 - MAY PMT ON: F0051 INV10846, D446 INV10849	-551.29	27,060.58
05/31/2002	INV #10936 - Shearing of 7 Nudie Cut	245.00	27,305.58
05/31/2002	PMT #1015 - PMT ON: SHEARING OF 7 INV10936	-245.00	27,060.58
06/17/2002	PMT #1026 - JUN PMT ON: F0051 INV10846/ D446 INV10849	-553.92	26,506.66
07/26/2002	PMT #1032 - JUL PMT ON: F0051 INV10846, D446 INV10849	-556.58	25,950.08
08/23/2002	PMT #1002 - AUG PMT ON: F0051 INV10846	-559.23	25,390.85
09/18/2002	PMT #4911 - Sept PMT on Inv#10846(F0051)/Inv.#1049(D446)	-561.92	24,828.93
10/10/2002	INV #11018	1,250.00	26,078.93
10/10/2002	INV #11019	1,250.00	27,328.93
10/24/2002	PMT #1029 - PMT on Breeding S310 X D390	-1,250.00	26,078.93
10/24/2002	PMT #1029 - PMT on Breeding 6050 X D283	-1,250.00	24,828.93
10/24/2002	PMT #1029 - OCT PMT on F0051 & D446	-564.62	24,264.31

AMOUNT DUE

\$23,126.94

Appendix 4

**BENJAMIN LAW GROUP, PLLC**

720 Third Avenue, Suite 1400  
Seattle, WA 98104-1825

Andrew L. Benjamin  
Email: abenjamin@benjlaw.com

Telephone: (206) 622-8953  
Facsimile: (206) 622-1365  
www.benjlaw.com

Heritage M. Filer, Associate  
Email: hfiler@benjlaw.com

October 9, 2007

Jon E. Cushman, Esq.  
Cushman Law Offices, P.S.  
924 Capitol Way S.  
Olympia, WA 98501-8239

Mr. James Ayers  
P.O. Box 14094  
Albuquerque, NM 87191-4094

**Re: *Alpacas of America, LLC, a Washington Limited Liability Company, vs. James Ayers; Thurston County Superior Court Cause No. 06-2-01010-5***

Dear Messieurs Cushman and Ayers:

I thank you both for your presentations at the arbitration on October 2, 2007, in Everett, Snohomish County, Washington. As I explained during my remarks at the hearing, it is regrettable that both parties failed, at times during the lead up to and at the arbitration, to communicate clearly and/or timely abide by my instructions. This fact resulted in additional time being spent by the arbitrator that could have been avoided.

The balance of this letter will constitute my Award in this case.

1. There existed a mutual mistake of fact concerning the gender of the \$21,500-priced alpaca Supernova. A female was contemplated, but Supernova was a hermaphrodite. In such an instance, the trier should do equity to correct the mistake to the extent practicable.

2. The replacement alpaca, Ato 1019, was not of quality comparable to an alpaca in Supernova's price range.

3. Both parties breached the sales contract by failing to properly inspect Supernova before the sale.

4. Mr. Ayers has had the use of the alpacas for the intervening period and will retain ownership of Ato 1019 after this award.

5. While plaintiff Ayers is the net prevailing party as he is entitled to a recovery from AOA, the result is much less than sought by Ayers and more than AOA proposed. Thus, neither is the prevailing party as to the attorney fee clauses, while both parties are equally responsible for the arbitration fees and costs.

Appendix 5

Jon E. Cushman, Esq.  
Mr. James Ayers  
October 9, 2007  
Page 2

6. The net damages awarded to Mr. Ayers from AOA is \$10,000.

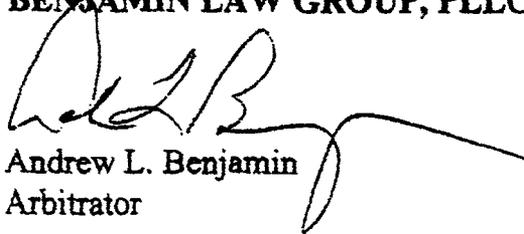
FEES

Attached hereto is my billing statement for services rendered. There remains an amount due and owing of \$1,285.65, which would be \$642.82 for each party, payable within thirty (30) days of this ruling. If paid within that time, I am willing to accept the sum of \$500.00 in satisfaction of each of your respective shares.

Thank you for your attention.

Very truly yours,

**BENJAMIN LAW GROUP, PLLC**

  
Andrew L. Benjamin  
Arbitrator

ALB:kh

Enclosure

alb pllc\clients\arbitrat\alpacas v ayers\071009cushman&ayersltr.doc

Appendix 5

**CERTIFICATE OF MAILING**

I certify that I mailed a copy of this document, postage prepaid, to all parties or their counsel of record on October 9, 2007. I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Seattle WA, October 9, 2007  
A. Benjamin

**BENJAMIN LAW GROUP, PLLC**

720 Third Avenue, Suite 1400  
Seattle, WA 98104-1825

Andrew L. Benjamin  
Email: abenjamin@benjlaw.com

Telephone: (206) 622-8953  
Facsimile: (206) 622-1365  
www.benjlaw.com

Heritage M. Filer, Associate  
Email: hfiler@benjlaw.com

November 20, 2007

Jon E. Cushman, Esq.  
Cushman Law Offices, P.S.  
924 Capitol Way S.  
Olympia, WA 98501-8239

Mr. James Ayers  
P.O. Box 14094  
Albuquerque, NM 87191-4094

**Re: *Alpacas of America, LLC, a Washington Limited Liability Company, vs. James Ayers; Thurston County Superior Court Cause No. 06-2-01010-5***

Dear Messieurs Cushman and Ayers:

This constitutes my Amended Award and clarifies the claim by the plaintiff Alpacas of America concerning a lack of subject matter jurisdiction supporting the arbitrator's award of October 9, 2007.

**AMENDMENT OF AWARD TO CORRECT SCRIVENER ERROR**

First, I note that neither party called the mistaken reference at section four of the original Award to my attention before the court hearing on the matter. Although such is no excuse for the undersigned's drafting error, professional courtesy and judicial economy should have compelled the objector to try to clarify that point before taking up court time on the subject.

That section is amended pursuant to RCW 7.04A.240(a) to read:

4. Mr. Ayers has had the use of the alpacas for the intervening period and will retain ownership of ~~Ato-1019~~ Supernova after this award.

**SUBJECT MATTER JURISDICTION EXISTS. AS CRUX OF CASE IS THE BREACH OF 2002 SALES CONTRACT THAT REQUIRED CONTRACTUAL ARBITRATION IN SNOHOMISH COUNTY**

Second, I have been requested by the plaintiff and directed by the court to address the question of jurisdiction. Contrary to the way the seller characterizes this matter, I find that the entire claim arises from the breach of the 2002 original sales contract.

Appendix 6

As set forth in my original Award, the seller breached its duty to provide a breedable female alpaca that was worth the \$21,500 purchase price. AOA's current counsel, who was not present during the arbitration, points to the waiver of warranty language in the exchange contracts entered into after the original sales contracts. AOA was questioned sharply at the hearing concerning the unconscionability of those provisions, for if the replacement animal is as inadequate as the original, fairness dictates that the seller make the buyer whole regardless of the inclusion of a limitation of liability provision.

The original 2002 sales contract provides for contractual arbitration in Snohomish County. Both parties and the undersigned at all times treated the case as one under contractual arbitration. Both parties paid a private retainer and paid the residual fee owing, without ever raising an objection. Aside from the fee argument, which was not raised in the hearing with the Court, I fail to see any prejudice from the case being adjudicated as a contractual rather than mandatory arbitration matter. Neither party noted a mandatory arbitration by filing a Statement of Arbitrability, so it is hard to understand how the court or undersigned should have determined that such was more appropriate under the circumstances.

For these reasons, I find that subject matter jurisdiction existed to conduct and decide the arbitration of this dispute in Snohomish County, Washington as contractual arbitration was specifically provided for in the dispute venue provision in the second to last paragraph of the original Sales Contract (drafted by Alpacas of America) entered into in early 2002 (attached).

#### FEES

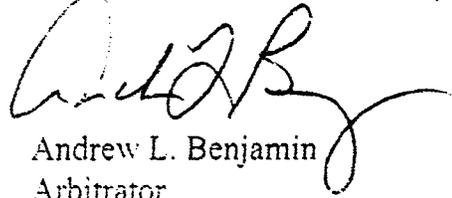
Attached hereto is my billing statement for services rendered. I have not charged the parties for clarifying the mistaken draftsmanship, which was first done by email on November 15, 2007. There remains an amount due and owing of \$1,237.50. Because AOA did not first seek clarification from the undersigned and has re-argued points raised at arbitration in a very lengthy submission, I order that the plaintiff AOA pay the entire amount due. If paid within thirty (30) days of this ruling, I am willing to accept the sum of \$850.00 in satisfaction of that administrative expense.

Jon E. Cushman, Esq.  
Mr. James Ayers  
November 20, 2007  
Page 3

Thank you for your attention.

Very truly yours,

**BENJAMIN LAW GROUP, PLLC**



Andrew L. Benjamin  
Arbitrator

CC: Judge Gary R. Tabor

ALB:kh

Enclosures

alb pllc\clients\arbitrat\alpaca v ayers\071120cushman&ayersltr.doc

RECEIVED  
11/21/07  
Sectra 11/21/07

IN THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

---

ALPACAS OF AMERICA, LLC,            )  
  )  
                                  Plaintiff,        )  
  )  
vs.                                        )  
  ) NO. 06-2-01010-5  
JAMES AYERS,                            )  
  )  
                                  Defendant.        )  
  )  
  )  
  )

---

VERBATIM REPORT OF PROCEEDINGS

---

BE IT REMEMBERED that on December 14, 2007,  
the above-entitled matter came on for hearing before the  
HONORABLE GARY R. TABOR, Judge of Thurston County  
Superior Court.

---

Reported by:       Aurora Shackell, Official Reporter,  
                          CCR#2439  
                          2000 Lakeridge Drive SW, Bldg No. 2  
  
                          Olympia, WA 98502  
  
                          (360) 786-5570  
  
                          shackea@co.thurston.wa.us

APPEARANCES

For the Plaintiff:           STEPHANIE BIRD  
                                  Cushman Law Office  
                                  924 Capitol Way S, Ste. 201  
                                  Olympia, WA 98501

For the Defendant:         JAMES AYERS  
pro se                         P.O. Box  
                                  Albuquerque, NM 87191

1 they are basing their defamation claim on.

2 So I just want to make sure the Court is  
3 aware that all future contracts are exactly the  
4 same as the original sales contract of Super  
5 Nova. That's all, Your Honor.

6 THE COURT: All right. Thank you.  
7 Many of the arguments I've heard today I've  
8 heard before, and I'm not going to spend a  
9 great deal of time going back through the  
10 procedural history of this matter. But it's  
11 clear that the Court has previously sent the  
12 matter to arbitration in Snohomish County under  
13 the terms of contract language. There was an  
14 arbitration held, and a decision was rendered.  
15 That decision was dated October 9th, 2007.

16 It was only after that decision was sent  
17 back to this Court with Mr. Ayers' request that  
18 judgment be entered that the plaintiffs in this  
19 matter raised the issue of jurisdiction,  
20 claiming that the Court should not have sent  
21 the matter to arbitration and objecting to that  
22 arbitration.

23 There were a number of arguments that  
24 were raised that had not been raised at the  
25 time of the arbitration, at least so far as I

1 knew. Clearly, there's not a record of the  
2 arbitration hearing itself, and so I did hear  
3 both sides suggest that certain things were or  
4 were not said at the arbitration.

5 In any event, ultimately, I sent the  
6 matter back for clarification by Mr. Benjamin,  
7 the arbitrator. I clearly pointed out that  
8 there had been a mistake as to which alpaca was  
9 still in Mr. Ayers' possession, and Ato 1019  
10 had been returned to the plaintiffs, Mr. Ayers  
11 had taken back Super Nova. And so Mr. Benjamin  
12 looked this situation over again, including my  
13 suggestion that he consider the issue of  
14 whether or not jurisdiction was raised before  
15 him, whether or not it was waived, whether or  
16 not he had jurisdiction to hear the matter.

17 He did address that in his November 20th  
18 ruling. He changed what he characterized as a  
19 scrivener's error on paragraph four on page  
20 one, substituting the name of Super Nova. He  
21 maintained the \$10,000 award that he had  
22 previously given on defendant's counterclaim,  
23 and I'll specifically quote from the paragraph  
24 at the top of page two: He says, "As set forth  
25 in my original award, <sup>Appendix 7</sup> the seller breached its

1 duty to provide a breedable female alpaca that  
2 was worth the \$21,500 purchase price." That is  
3 the basis for his \$10,000 award.

4 I'm going to uphold that award from the  
5 standpoint of, I'm going to enter judgment.  
6 I'm going to deny the plaintiff's motion that  
7 that arbitration award be stricken and that the  
8 Court consider further action such as setting  
9 the matter for trial or consider arbitration  
10 under mandatory arbitration. I'm not going  
11 there. The award was \$10,000. I'll note,  
12 also, that Mr. Benjamin indicated that because  
13 of the convoluted nature --

14 MR. AYERS: Your Honor, I've been  
15 breaking up. I cannot understand you.

16 THE COURT: All right. Let me repeat.  
17 I'll also say that, based upon Mr. Benjamin's  
18 request that the fee for this second  
19 arbitration be paid by the plaintiffs, Alpacas  
20 of America, I'm going to direct that that be a  
21 part of this judgment.

22 Now, let me clarify that: There is an  
23 amount due and owing for the first arbitration  
24 of \$1,237.50, and that was to be split between  
25 the two parties. <sup>Appendix 7</sup> And there was a new amount of

1 \$850 assessed against the plaintiffs, Alpacas.  
2 There was also some mention early on of  
3 accepting \$500 from each side instead of  
4 \$1,285, at least changed that amount somewhat.

5 In any event, Ms. Bird, what's your  
6 understanding of what Mr. Benjamin says that  
7 Alpacas of America owes as far as his costs?

8 MR. BIRD: My understanding is both  
9 Mr. Ayers and Alpacas of America paid -- we  
10 each paid the \$500 that was owed initially. As  
11 to the \$850, my understanding is that that is  
12 owed by Alpacas of America. Alpacas of America  
13 has sent the check. The check is on its way to  
14 Mr. Benjamin.

15 THE COURT: All right. You're  
16 representing to me that each side has already  
17 paid for the first arbitration? That's \$500  
18 each.

19 MR. BIRD: Yes, Your Honor.

20 THE COURT: All right. So as to the  
21 judgment, then, I'll only impose that \$850 be  
22 paid by Alpacas of America to the arbitrator.

23 MR. AYERS: Hello?

24 THE COURT: I'm still here.

25 MR. AYERS: <sup>Appendix 7</sup> Okay, I heard the phone

1 line went blank. I'm sorry.

2 THE COURT: I'm writing in the  
3 judgment \$850 to the arbitrator. And I guess  
4 I'll write his name in here, although that is  
5 clear. It's Andrew Benjamin. What about costs  
6 in this particular case?

7 MR. AYERS: I think in his first --

8 THE COURT: Well, I'm asking you about  
9 costs that you may have encountered in filing a  
10 counterclaim.

11 MR. AYERS: I believe it was \$250 to  
12 file it with the Court.

13 THE COURT: Well, that would be my  
14 understanding. I've not looked back through  
15 the file to see if indeed that was the amount.

16 MR. AYERS: That was the amount, Your  
17 Honor.

18 THE COURT: Ms. Bird, do you have any  
19 disagreement with that amount?

20 MR. AYERS: I don't know, Your Honor.  
21 I don't know the cost of filing a counterclaim.

22 THE COURT: It's the same as the  
23 filing fee. So it may be \$200.

24 MR. AYERS: I'm sorry. It is 200.

25 Here, I'm sorry, it is <sup>Appendix 7</sup> \$200 for the filing fee.

# ALPACAS OF AMERICA

16641 HIGHWAY 99 SE ~ TENINO, WASHINGTON 98589

TELEPHONE: (360) 264-7585 FAX: (360) 264-7992 E-MAIL: alpaca@alpaca1.com WEB: www.alpaca1.com

INVESTMENT QUALITY STOCK VISITORS WELCOME

LARGEST HERD IN NORTH AMERICA

SUPPLYING BREEDING STOCK WORLDWIDE

## REPLACEMENT STUD SERVICE CONTRACT

January 26, 2005

### Parties:

- |   |  |
|---|--|
| 1. ALPACAS OF AMERICA, LLC<br>ADDRESS: 16641 Old Highway 99 Southeast<br>CITY: Tenino STATE: WA ZIP: 98589<br>PHONE: (360) 264-7585 FAX: (360) 264-7992 | 2. DAM OWNER: Jim Ayers<br>ADDRESS: P.O. Box 1333<br>CITY: Canon City STATE: CO ZIP: 81215<br>PHONE: (719) 348-4867 FAX: |
|---|--|

### Recitals:

1. ALPACAS OF AMERICA, LLC offers service of the stud alpaca male PPERUVIAN ELAR G4534.  
ARI Registration Number: 123030, Blood Case Number: AL1418-423 (hereafter Stud), to Dam Owner;
2. Dam Owner of the Dam alpaca SUPER NOVA D550 AOA;  
ARI Registration Number: 825373, (hereafter Dam), hereby contract for this stud service;  
Microchip Number: 126646562A.

### Now, Therefore, It is Agreed As Follows:

1. Dam Owner agrees to pay the fee of \$0.00 payable to ALPACAS OF AMERICA, LLC, for stud service to the above identified Stud. This breeding is a replacement for the above-listed Dam's previous breeding to PERUVIAN FUEGO G226. This breeding is 1 of 1 that is to be received by the Dam owner for the above listed Dam. This breeding at the discretion of Alpacas of America includes boarding Dam for a period not to exceed sixty (60) days at ALPACAS OF AMERICA, LLC. For each additional day the Dam remains, a fee of \$4.00 per day will be charged. Any female alpaca to be bred at ALPACAS OF AMERICA, LLC will be required to have a microchip. In the event any given female alpaca does not have a microchip, she will be microchipped at the base of the left ear by ALPACAS OF AMERICA, LLC. The charge for this is \$30.00 per alpaca, which the Dam Owner agrees to pay. The Dam Owner also agrees to pay a \$30.00 dollar microchip charge for any unmicrochipped cria at the Dam's side.  
*\$3.00 GA* *90 day*
2. The Dam Owner agrees not to hold ALPACAS OF AMERICA, LLC liable in the event of sickness or death on any Dam or cria as a result of a vaccination or the lack thereof.
3. This Contract can be voided by ALPACAS OF AMERICA, LLC at any time for any reason.
4. Dam Owner hereby gives ALPACAS OF AMERICA, LLC full discretion to manage breeding of Dam to achieve pregnancy during the service period. The Service period will not last longer than 60 days. At 60 days arrangements will be made for transport of the Dam from the facility owned by Alpacas of America.
5. Upon ALPACAS OF AMERICA, LLC's receipt of the signed contract the breeding process will begin on the Owner's Dam.
6. Dam Owner authorizes emergency veterinary care and agree to pay all veterinary charges for services rendered to Dam while in the care of ALPACAS OF AMERICA, LLC.
7. ALPACAS OF AMERICA, LLC makes no guarantees as to pregnancy or the birth of a live cria. Alpacas of America does not guarantee fleece type or degree of quality in any cria resulting from this pregnancy.

Appendix 8

INITIALS: JB RPS

INITIALS: JA JA

8. No guarantees or warranties are provided by ALPACAS OF AMERICA, LLC or their agents beyond those expressly stated herein. The sole remedies of Dam Owner are those contained herein. The parties further agree that no express or implied warranties apply in this transaction, and none have been made by ALPACAS OF AMERICA, LLC. No warranties have been made that the sire is in fact free from cosmetic, phenotypic, genetic, conformational, or aesthetic defects, nor that the offspring of this breeding of Sire and Dam shall be free of such defects. ALPACAS OF AMERICA, LLC does not guarantee the cria that may be produced from this breeding for phenotypic or genotypic quality, including color and gender. Dam Owner has inspected Stud, or has been given the opportunity to do so and declined (their signature hereto being conclusive evidence of this fact), and finds him free of any known defects that make a breeding of Stud and Dam inadvisable.

9. This is a contract for services and not for the sale of goods within the meaning of the Uniform Commercial Code (UCC). The UCC warranties of merchantability and suitability for a particular purpose do not apply as a matter of law; however, if the parties operate under a mistake of law, then Dam Owner acknowledges that all UCC warranties are waived as a matter of fact. Accordingly, no remedies under the UCC applicable to the sale of goods are available to Dam Owner.

10. Dam Owner is responsible for all costs of transportation of Dam to and from ALPACAS OF AMERICA, LLC facility. In the event that ALPACAS OF AMERICA, LLC, their agents or principals transport the Dam and/or her cria to or from ALPACAS OF AMERICA, LLC's facility, they will not be liable in the case of injury or death to the Dam or her cria as a result of transport.

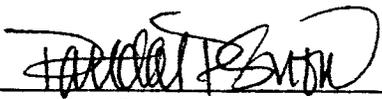
11. Dam Owner releases, discharges, and agrees to hold Stud Owner and ALPACAS OF AMERICA, LLC, their agents and principals harmless from all claims that may arise as a result of this Stud Service Contract and the attendant boarding of Dam (and any cria at her side). Dam Owner represents either that Dam (and any cria at her side) is fully insured with a full mortality insurance policy. Dam Owner further agrees that their sole remedy, in the event of injury, damage, death or other loss, or loss of value to Dam or any cria at her side, shall be to make claim against any insurance policy that they have acquired. If Dam Owner fails to acquire such insurance, and hence not act as their own self-insurer, they shall be deemed to have waived any claim against ALPACAS OF AMERICA, LLC, their agents and principals.

12. In the event any lawsuit is initiated by either party, the prevailing party shall be awarded reasonable attorney fees and costs of litigation. Jurisdiction and venue of any lawsuit arising out of this contract shall be in the local state court of appropriate jurisdiction in Thurston County, Washington.

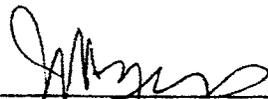
13. Neither ALPACAS OF AMERICA, LLC nor their agents or employees shall be liable for any injury, disease or disability suffered by Dam or her cria while in their custody. This contract contains the entire agreement between the parties.

14. Both ALPACAS OF AMERICA and DAM OWNER agree that a signed faxed copy will be sufficient to begin breeding the above-listed Stud and Dam if the stud owner has received payment from the dam owner. No breeding will begin on the above listed Dam until a contract has been signed by the Dam owner and received by Alpacas of America. The faxed copies would then be legal and binding. Hard copies of this contract will follow via mail.

**REPRESENTING:**

  
\_\_\_\_\_  
ALPACAS OF AMERICA, LLC

By: Randal P. Snow

  
\_\_\_\_\_  
DAM OWNER: Jim Ayers  
Ranch:  
Address: P.O. Box 1333  
City, State, Zip: Canon City, CO 81215  
Phone: ~~(719) 348-4867~~  
Fax: 714-371-2139  
ILR Ranch Code:

Cheryl A. Gray, certifies and declares as follows:

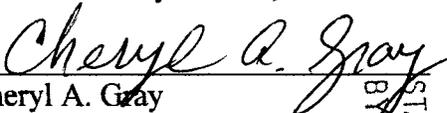
1. I am the Manager of Classic Distributing, LLC. I am over the age of 18, not a party to this action.
2. On June 17<sup>th</sup> 2008, I sent via overnight United States Postal Service Mail, for delivery/filing, Respondent's Motion on the Merits to:

Court of Appeals, Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402

3. On June 17<sup>th</sup>, 2008, I sent via certified United States Postal Service Mail, a copy of the above-described document to:

CUSHMAN LAW OFFICES, P  
924 Capital Way South  
Olympia, Washington 98501

DATED at Penrose, Colorado this 17<sup>th</sup> day of June, 2008

  
Cheryl A. Gray

FILED  
COURT OF APPEALS  
DIVISION II  
08 JUN 19 PM 2:28  
STATE OF WASHINGTON  
CLERK

James Ayers Motion on the Merits