

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Gaines, Berland Inc.

93-03234

Name of Respondents

Alexander Bienenstock  
Sandra Bienenstock  
Richard G. Sonkin

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**REPRESENTATION**

For Claimant, Gaines Berland, Inc. ("GB"), Edward H. Pomeranz, Esq. of Graubard, Mollen Horowitz located in New York, New York.

For Respondents and Third Party Claimant, Alexander and Sandra Bienenstock ("Bienenstock"), Lawrence E. Jaffe, Esq. in Hasbrouck Heights, New Jersey.

For Third Party Respondent, Richard G. Sonkin ("Sonkin"), Miriam B. Chaloff of Graubard Mollen Horowitz Pomeranz & Shapiro, located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed by Gaines Berland on: August 13, 1993.  
Gaines Berland Inc.'s Submission Agreement was signed on: August 12, 1993.

Statement of Answer, Counterclaim and Third Party Claim filed by The Bienenstocks on: November 12, 1993.  
The Bienenstocks' Submission Agreement was signed on: November 11, 1993.

Reply to Counterclaim and Third Party Complaint was filed by Gaines Berland Inc. and Sonkin on: December 3, 1993.  
Sonkin's Submission Agreement was signed on: December 3, 1993.

**HEARING INFORMATION**

Hearing Date/Sessions: December 1, 1994 - 2 Sessions

Hearing Location: NASD Offices, 33 Whitehall Street, New York, New York.

**CASE SUMMARY**

Claimant alleged the Bienenstocks failed and refused to pay the outstanding balance from their account with Claimant. Claimant explained that at the direction of the Bienenstocks, Claimant purchased shares of Immune Response Corp. stock ("IRC") on margin for a total price of \$34,575.00, resulting in a commission due Claimant of \$409.00. Despite due demand and pursuant to the customer agreement, Claimant maintained that the Bienenstocks refused to pay any portion of the purchase price of the stock or commission except \$1,900.00. Claimant partially recovered by selling the shares but stated that the Bienenstocks continue to owe an outstanding balance of \$14,146.50.

Respondents, the Bienenstocks, answered, counterclaimed and entered a third-party claim against Richard Sonkin. The Bienenstocks stated that during May, 1993, they were solicited by GB and Sonkin to purchase a stock (Sonic), but the Bienenstocks responded that they had very little money to invest. They alleged that Sonkin suggested the Bienenstocks purchase IRC which would make enough money for the Bienenstocks to also purchase Sonic. The Bienenstocks maintain that GB and Sonkin misrepresented the facts regarding the IRC and based upon that misinformation, Respondents purchased IRC. The Bienenstocks maintain that IRC was an unsuitable and risky investment for them, that GB and Sonkin were aware of that fact, and despite this, continued to misinform and misrepresent the stock to the Bienenstocks who were pushed to invest further in IRC, which they did. As IRC continued to decline in value, the parties were forced to sell all of the IRC stock at a loss. In addition, stated the Bienenstocks, GB sold the Bienenstock's shares of Royal Caribbean Stock without authorization. The Bienenstocks add that GB and Sonkin are liable for negligent misrepresentation, failure to make full disclosure of the trading market for and investigation of the IRC stock, breach of fiduciary duty, violations of NASD rules, state law, common law fraud and deceit, breach of contract and violation of New York State law under the "Martin Act" and Blue Sky Laws.

Claimant, GB and Third Party Respondent, Sonkin, replied to the allegations by explaining that the Bienenstocks had been occasional customers of Sonkin since 1985. GB and Sonkin denied all allegations against them except admitted to relaying information about the IRC and Sonic stocks and processing the transactions.

**RELIEF REQUESTED**

Claimant, Gaines Berland, requested the sum of \$14,146.50 with margin interest and its reasonable expenses, including attorneys' fees and costs and Claimant and third-party Respondent requested the counterclaims and third-party claims be dismissed in their entirety.

Respondents requested \$14,437.50 plus return of their \$1900.00 deposit, punitive damages plus interest, reasonable attorneys' fees and costs.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies and have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims presented at the hearing are dismissed in their entirety.
2. Gaines Berland Inc., and Richard Sonkin are jointly and severally liable for one-half the forum fees.
3. Alexander and Sandra Bienenstock are liable for one-half the forum fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

Non-refundable filing fee:	\$ 500.00
Hearing Sessions Deposit (\$300.00 x 2 sessions)	\$ 600.00
Counterclaim fees:	\$ <u>400.00</u>
Total Fees:	\$ <u>1500.00</u>

1. Gaines Berland paid \$800.00 and is due a refund of \$50.00.
2. The Bienenstocks paid \$700.00 and owe \$50.00 made payable directly to Gaines Berland, Inc.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature  
Name

Public/Industry

  
Michael P. Golden

NASD Date of Decision: February 8, 1995