

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

Reznik & Sons Corp.

94-00605

**Name of Respondents**

Lew Lieberbaum & Co. Inc.,  
Michael J. Finnan, and  
Jay Israel

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**REPRESENTATION OF PARTIES**

Claimant Reznik & Sons Corp. ("Reznik & Sons") was represented at the hearing Pro Se.

Respondents Lew Lieberbaum & Co. Inc. ("Lew Lieberbaum") and Michael J. Finnan ("Finnan") were represented by co-counsel Leonard A. Neuhaus, Esq. and Jay Marc Israel, Esq. of Lew Lieberbaum & Co. Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed by Claimant Reznik & Sons on February 16, 1994. The Uniform Submission Agreement was signed by Robert Reznik, President, on behalf of Reznik & Sons on February 10, 1994.

A Joint Statement of Answer was filed by Respondents Lew Lieberbaum, Finnan, and Jay Marc Israel ("Israel") on April 25, 1994. The Uniform Submission Agreement was signed by Leonard A. Neuhaus, Chief Operational Officer/Chief Financial Officer, on behalf of Lew Lieberbaum on April 22, 1994. The Uniform Submission Agreement was signed by Respondent Finnan on April 22, 1994. Respondent Israel did not execute a Uniform Submission Agreement.

Claimant Reznik & Sons filed a Response to Respondents' Answer on May 6, 1994.

**HEARING INFORMATION**

Pre-hearing conferences were held on September 21, 1994 and September 30, 1994, for a total of two (2) pre-hearing conferences.

The hearing was held on October 6, 1994 in Dallas, Texas for a total of two (2) hearing sessions.

### **CASE SUMMARY**

Claimant Reznik & Sons alleged in their Statement of Claim that during 1993, Respondents Lew Lieberbaum and Finnan: opened an account for Reznik & Sons and effected securities transactions in such account without proper corporate authority; engaged in pressure sales tactics relating to the solicitation of purchases of 500 shares of Guinness, 2,000 shares of Curaflex, and 3,000 units of Boston Pacific Medical, Inc. ("BPML"); failed to follow Claimant's instructions to cancel a subsequent purchase order for an additional 5,000 units of BPML; and executed an unauthorized purchase transaction for 3,500 shares of Conquest Airlines Corp. ("Conquest").

Respondents Lew Lieberbaum and Finnan in their joint Answer denied each and every substantive allegation contained in the Statement of Claim. Respondents set forth the following affirmative defenses in their Answer: failure to state a cause of action upon which relief may be granted; the claims are barred by the doctrines of ratification and estoppel; any damage or loss sustained by Claimant was caused or contributed to by Claimant's own actions, fault or lack of due diligence; Claimant authorized and directed the execution of all transactions in its account; Respondents acted in good faith and exercised the degree of care, diligence, and skill of a prudent person; and the claims fail to state with specificity the fraudulent acts that form the basis of the claim, and therefore fail to state a cause of action necessary to support an assessment of treble damages.

Claimant Reznik & Sons, in its Response to Respondents' Answer, repeated the allegations contained in the Statement of Claim, and further alleged that these acts constituted fraud on the part of Respondents.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. 62.5 % of the \$13,650.50 out-of-pocket losses relating to the uncanceled purchase order of BPML;
2. \$6,388.00 of out-of-pocket losses relating to the unauthorized purchase of Conquest Air; and
3. treble damages.

Respondents Lew Lieberbaum and Finnan requested:

1. that the Statement of Claim be dismissed with prejudice; and
2. that they be awarded their expenses, costs, attorneys' fees and such other relief deemed just and proper.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Israel did not file with the NASD a properly executed submission to arbitration. On or about April 22, 1994 Respondent Israel filed a Motion to Dismiss the Statement of Claim against him pursuant to §16 of the NASD Code of Arbitration Procedure ("the Code"). The Motion was discussed during the Pre-Hearing Conference held on September 21, 1994, at which time the Chair held in abeyance a ruling on the Motion pending further review by the Panel, and informed Respondent Israel that he may re-raise the issue at hearing. On October 4, 1994, Claimant Reznik & Sons dismissed any and all claims against Respondent Israel, thus rendering the Motion to Dismiss moot.

The parties have agreed that the Award in this matter may be executed by counterpart copies. The parties have also agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

**AWARD**

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

1. Respondents, Lew Lieberbaum and Michael J. Finnan shall be and hereby are jointly and severally liable for, and shall pay to Claimant, Reznik & Sons, damages for out-of-pocket losses in the sum of Eight Thousand, Two Hundred Fifty Dollars and No Cents. (\$8,250.00).
2. Respondents, Lew Lieberbaum and Michael J. Finnan shall be and hereby are jointly and severally liable for, and shall pay to Claimant, Reznik & Sons, Five Hundred Dollars and No Cents (\$500.00) as reimbursement for the hearing session deposit previously paid to the NASD by Claimants.
3. Any relief not specifically provided for herein is denied.

**FORUM FEES**

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

2 pre-hearing sessions x \$300 = \$ 600.

2 hearing sessions x \$500 = \$1,000.

Pursuant to §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$150, and the hearing session deposit in the amount of \$500 previously paid to the NASD by Claimants.

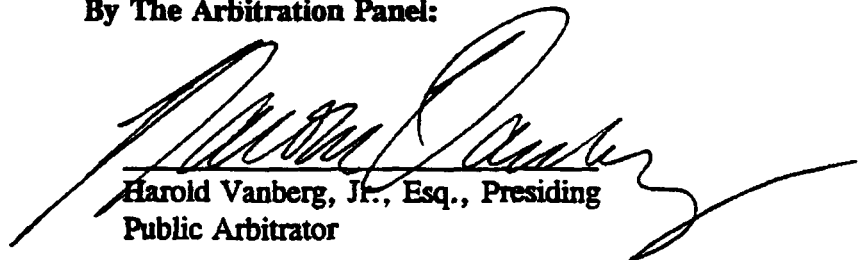
The panel has ordered that the Respondents, Lew Lieberbaum and Michael J. Finnan, jointly and severally, pay additional forum fees in the amount of \$1,100.00 to the NASD.

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

**By The Arbitration Panel:**

Dated:

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Harold Vanberg, Jr., Esq., Presiding  
Public Arbitrator

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Carroll V. Galbreath  
Public Arbitrator

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David L. Baker  
Industry Arbitrator

Date Award Served By The NASD:

11/9/94

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**By The Arbitration Panel:**

Dated:

Oct 19, 1994

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Harold Vanberg, Jr., Esq., Presiding  
Public Arbitrator

Carroll V. Galbreath  
Carroll V. Galbreath  
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Harold Vanberg, Jr., Esq., Presiding  
Public Arbitrator

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Carroll V. Galbreath  
Public Arbitrator

10-20-94

  
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David L. Baker  
Industry Arbitrator

Date Award Served By The NASD: \_\_\_\_\_

11/9/94