

**AWARD**

**NASD REGULATION, INC.**

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In the matter of the Arbitration Between

Name of Claimant(s)

Paulson Investment Company, Inc.

Arbitration  
No. 96-02576

Name of Respondent(s)

Landmark International Equities  
William M. Jordan, Jr.  
William Nunziato  
Jawahar K. Doshi  
Howard Berger

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**REPRESENTATION**

For Claimant: Gary M. Berne, Esq., Stoll Stoll Berne Lokting & Shlachter P.C., Portland, Oregon

For Respondents Landmark International Equities and William Nunziato: William Nunziato, Whitestone, New York

For Respondent William M. Jordan, Jr.: William M. Jordan, Jr., Commack, New York

For Respondent Jawahar K. Doshi: Woody Hong, Esq., Leventhal & Slade, New York, New York

For Respondent Howard Berger: Roger J. Schwarz, Esq., New York, New York

**CASE INFORMATION**

Statement of Claim filed: June 14, 1996

Amended Statement of Claim filed: February 5, 1997

Claimant Paulson Investment Company, Inc.'s Response to Respondents Howard Berger, William Nunziato and Jawahar K. Doshi's Motions to Dismiss filed: May 9, 1997

Claimant Paulson Investment Company, Inc.'s Supplemental Response to Respondents Howard Berger, William Nunziato and Jawahar K. Doshi's Amended Motions to Dismiss filed: July 23, 1997

Claimant Paulson Investment Company, Inc.'s Response to Respondent William M. Jordan Jr.'s Motion to Dismiss filed: September 5, 1997

Claimant's Submission Agreements signed: June 13, 1996 and February 5, 1997

Statement of Answer filed by Respondent William M. Jordan, Jr.: April 3, 1997

Motion to Dismiss filed by Respondent William M. Jordan, Jr.: July 14, 1997

Statement of Answer and Motion to Dismiss filed by Respondents William Nunziato and Howard Berger: April 18, 1997

Motion to Dismiss and Affidavit filed by Respondent Jawahar K. Doshi: April 21, 1997

Affidavit of Respondent Jawahar K. Doshi in further support of Motion to Dismiss filed: July 15, 1997

Respondents' Submission Agreements signed as follows:

William Nunziato: April 16, 1997

Jawahar K. Doshi: March 20, 1997

Howard Berger: April 16, 1997

Respondent William M. Jordan, Jr.'s Submission Agreement was signed and filed April 3, 1997. However, said Submission Agreement was not properly executed before a Notary Public. Respondent Landmark International Equities did not file a Statement of Answer and Submission Agreement. However, these Respondents are subject to NASD Regulation, Inc. (NASDR) jurisdiction in accordance with Rule 10201 of the NASDR Code of Arbitration Procedure.

#### HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

July 9, 1997 (one session)

August 26, 1997 (one session)

Hearing Date(s)/Session(s): April 30, 1998 (two sessions)

May 1, 1998 (one session)

Hearing Location:

Portland, Oregon

### CASE SUMMARY

Referencing its investment in Guardian Technologies International, Inc., Claimant Paulson Investment Company, Inc. (Paulson) alleged that Landmark International Equities' (Landmark) actions constitute a violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder and alleged that Landmark's actions further constitute a violation of ORS 59.115 and 59.135. Claimant further alleged that each of the individual respondents is liable as a controlling person under Section 20 of the Securities Exchange Act of 1934 and ORS 59.115(3); and that the actions of Landmark further constitute breach of contract, and the actions of all respondents constitute the torts of bad faith breach of contract and fraud.

Respondent William M. Jordan, Jr. alleged that he should be dismissed from the above-referenced dispute and further alleged that he had absolutely no ownership in Landmark. Mr. Jordan further alleged that he was a clerk in the syndicate department executing instructions from the management of Landmark; and that he had no part in the decision making process that led to Paulson being deleted from the selling group of Guardian Technology International, and that he did not benefit from this in any way.

Respondents William Nunziato and Howard Berger denied any liability to Claimant and alleged that they should be dismissed from this matter. Respondents Nunziato and Berger further alleged that Claimant's Claim is in direct contravention with basic Principal/Agency law and Corporate law. Nunziato and Berger further alleged that New York State Law is very clear in that an agent of a company who is acting within his corporate capacity cannot be held personally responsible for actions performed within the scope of his employment; and that all of the Claimant's allegations relate to actions taken by Respondents Nunziato and Berger solely in their corporate capacity. Respondents Nunziato and Berger also asserted affirmative defenses.

Respondent Jawahar K. Doshi denied any liability to Claimant and alleged that he should be dismissed from this matter. Respondent Doshi further alleged that he had no supervisory responsibility, decision-making authority or involvement in the alleged failure of Landmark to deliver securities to Claimant. Respondent Doshi further alleged that he had no knowledge of any of the transactions involving Landmark's initial public offering, until the commencement of this arbitration, as he was employed by Landmark as the Senior Registered Options principal.

### RELIEF REQUESTED

Claimant requested:

1. Damages in the amount of \$25,716.19 for Paulson and \$256,908.39 for Paulson's customers, all together with pre-award and pre-judgment interest;
2. Costs, disbursements, and attorney fees;
3. Punitive damages; and
4. Such other relief as is just and equitable in the circumstances.

Respondent Jordan requested that he be dismissed as a Respondent in this matter.

Respondents Nunziato and Berger requested that Claimant's claims be dismissed against them in their entirety, and further requested attorneys fees, costs and such other and further relief as the Arbitration Panel may deem just and proper.

### OTHER ISSUES CONSIDERED AND DECIDED

On or about May 28, 1997, the panel of arbitrators reviewed and considered the positions of the parties relative to Claimant's Motion for Entry of Default. The panel denied the Motion.

On or about July 9, 1997, the panel of arbitrators determined that Claimant Paulson Investment Company, Inc. (Paulson) could not pursue claims on behalf of Paulson customers and granted the Motion to Dismiss Paulson's claims on behalf of its customers.

On or about August 7, 1997, the panel of arbitrators reviewed and considered the positions of the parties regarding Motions to Dismiss by Respondents William Nunziato, Howard Berger and Jawahar K. Doshi. The panel also reviewed and considered the positions of the parties relative to Claimant's request to add Eric Aronson as a party in this matter. The panel denied the Motions to Dismiss and granted the request to add Eric Aronson as a party in this matter.

On or about October 9, 1997, the panel of arbitrators reviewed and considered the positions of the parties regarding Respondent William M. Jordan, Jr.'s Motion to Dismiss. The panel denied the Motion.

On or about April 28, 1998, the panel of arbitrators denied Respondents William Nunziato, William M. Jordan, Jr. and Jawahar K. Doshi's requests to attend the evidentiary hearing by phone. The panel permitted Respondents to testify by phone.

Prior to the evidentiary hearing, the panel of arbitrators was advised that Claimant dismissed Gregory F. Mazzeo and Eric Aronson as parties in this matter.

Respondents Landmark International Equities, William Nunziato, William M. Jordan, Jr. and Jawahar K. Doshi did not appear at hearing. The panel determined that these Respondents received proper service and notice of the hearing and ruled to proceed in their absence.

The parties present at hearing agreed that the Award in this matter may be executed in either counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties present at hearing agreed to receive conformed copies of the Award while the originals remain on file with NASDR.

#### 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. All claims by Claimant against Jawahar K. Doshi are dismissed.

2. Respondents William Nunziato, William M. Jordan, Jr. and Howard Berger are jointly and severally liable for and shall pay to Claimant the sum of \$7,000.00, in satisfaction of Claimant's claims.

3. Claimant's claim for punitive damages is denied.

4. The parties shall each bear their respective costs including attorney's fees.

#### FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following forum fees are assessed: NASDR shall retain the \$1,000.00 hearing session deposit previously deposited by the Claimant. Forum fees shall be split between Claimant and Respondents Nunziato, Jordan and Berger (Respondents) and are calculated as follows:

Two pre-hearing sessions @ \$1,000.00/session =	\$2,000.00
Three hearing sessions @ \$1,000.00/session =	\$3,000.00
Total fees assessed =	\$5,000.00

Claimant's share (50%)	=	\$2,500.00
Credit for hearing deposit	=	\$1,000.00
Balance due	=	\$1,500.00

Respondents' share (50%)	=	\$2,500.00
Balance due	=	\$2,500.00

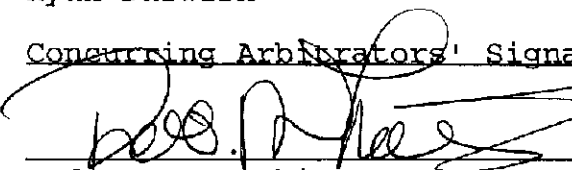
Fees are payable to NASD Regulation, Inc.

**ARBITRATORS**

Name . . . . . Public / Industry

Rodney O. McWhinney, Esq.	Industry Arbitrator
Daniel Dunnington	Industry Arbitrator
Ryan Darwish	Industry Arbitrator

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Rodney O. McWhinney, Esq.

\_\_\_\_\_  
Daniel Dunnington

\_\_\_\_\_  
Ryan Darwish

Date of Decision: \_\_\_\_\_

Date Served: 06/08/98

Claimant's share (50%)	=	\$2,500.00
Credit for hearing deposit	=	\$1,000.00
Balance due	=	\$1,500.00

Respondents' share (50%)	=	\$2,500.00
Balance due	=	\$2,500.00

Fees are payable to NASD Regulation, Inc.

**ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
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Rodney O. McWhinney, Esq.	Industry Arbitrator
Daniel Dunnington	Industry Arbitrator
Ryan Darwish	Industry Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Rodney O. McWhinney, Esq.

\_\_\_\_\_  
*Daniel Dunnington*  
Daniel Dunnington

\_\_\_\_\_  
Ryan Darwish

Date of Decision: 6-2-18

Date Served: 06/08/98

Claimant's share (50%)	=	\$2,500.00
Credit for hearing deposit	=	\$1,000.00
Balance due	=	\$1,500.00
 Respondents' share (50%)	 =	 \$2,500.00
Balance due	=	\$2,500.00

Fees are payable to NASD Regulation, Inc.

### ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
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Rodney O. McWhinney, Esq.	Industry Arbitrator
Daniel Dunnington	Industry Arbitrator
Ryan Darwish	Industry Arbitrator

### Concurring Arbitrators' Signatures

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Rodney O. McWhinney, Esq.

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Daniel Dunnington

\_\_\_\_\_  
Ryan Darwish

Date of Decision: 5/30/98

Date Served: 06/08/98