

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Daniel Hawkinson and Judith Hawkinson, Claimants vs. Landmark International Equities, Eric J. Aronson, William Nunziato, Howard Brett Berger and Martin Herbert Drayer, Respondents.

Case Number: 96-5178

Hearing Site: Milwaukee, Wisconsin

REPRESENTATION OF PARTIES

Claimant, Daniel Hawkinson ("D. Hawkinson") and Judith Hawkinson ("J. Hawkinson"), hereinafter collectively referred to as "Claimants": *John C. Houlihan, Esq., Johnson, Houlihan, Paulson & Priebe, S.C., Minocqua, Wisconsin.*

Respondent, Landmark international Equities ("Landmark") did not appear at hearing.

Respondent Eric J. Aronson ("Aronson") did not appear at hearing.

Respondent William J. Nunziato ("Nunziato") appeared at hearing, *pro se*, via telephone.

Respondent, Howard Brett Berger ("Berger"): Roger J. Schwarz, Esq., Law Offices of Roger J. Schwartz, New York, New.

CASE INFORMATION

Statement of Claim filed on or about: November 14, 1996

Amended Statement of Claim filed on or about: January 16, 1998

Second Amended Statement of Claim filed on or about: June 23, 1998

Claimant, Daniel Hawkinson, signed the Uniform Submission Agreement: November 14, 1996

Claimant, Judith Hawkinson, signed the Uniform Submission Agreement: November 14, 1996

Statement of Answer filed by Respondent, Eric J. Aronson, on or about: March 9, 1998

CASE SUMMARY

Claimants asserted the following causes of action: conspiracy to deceive and defraud, unsuitability, failure to execute, misrepresentation, and failure to supervise. The causes of action relate to the offer and sale of certain securities including units consisting of shares of common stock and warrants in an initial public offering of common stock and warrants in an initial public offering of Guardian Technologies International, Inc.

Unless specifically admitted in its Answer, Respondent Aronson denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants' failure to state a claim upon which relief may be granted, estoppel, waiver, ratification, lack of supervisory authority, lack of receipt of commissions generated by Claimants' account at Landmark International Equities, punitive damages are not within the scope of the arbitrators' authority.

RELIEF REQUESTED

Claimants requested:

| | |
|--|----------------------------|
| Compensatory Damages | \$ unspecified |
| Punitive Damages | \$ unspecified |
| Interest | \$ unspecified |
| Attorneys' Fees | \$ unspecified |
| Other Costs | \$ forum fees, unspecified |
| Other Monetary/Non-Monetary Relief if any: | none |

Respondent Aronson requested:

| | |
|--|------------------------|
| Compensatory Damages | \$0 |
| Punitive Damages | \$0 |
| Interest | \$0 |
| Attorneys' Fees | \$0 |
| Other Costs | \$unspecified |
| Other Monetary/Non-Monetary Relief if any: | dismissal, unspecified |

Respondent Berger requested (at hearing):

| | |
|--|------------------------|
| Compensatory Damages | \$0 |
| Punitive Damages | \$0 |
| Interest | \$0 |
| Attorneys' Fees | \$unspecified |
| Other Costs | \$unspecified |
| Other Monetary/Non-Monetary Relief if any: | dismissal, unspecified |

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant(s), the undersigned arbitrators the Panel determined that Respondent Eric J. Aronson has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of

the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Eric J. Aronson, William Nunziato, and Howard Brett Berger did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and (Eric J. Aronson) having answered the claim, (William Nunziato and Howard Brett Berger) appeared telephonically and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Respondent Nunziato voluntarily waived the service requirements stated in the Code and elected to appear and defend against the claims set forth in this action.

The panel denied Respondent Berger's Motion to Dismiss.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

All claims against Martin H. Drayer, Paul F. Italia and Gregory Mazzeo and Kelly S. Reinsmith, were dismissed by Claimants prior to hearing and were not adjudicated by the arbitration panel.

Respondent Landmark International Equities was not served with any of the pleadings or notices in this matter.

Than panel granted Claimants' Motion to Amend Statement of Claim.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent Eric J. Aronson is liable to and shall pay to Claimants Daniel Hawkinson and Judith Hawkinson the sum of \$335,510.00;
- 2.) Claimants' counsel's and Respondent Berger's counsel's requests for Attorney's Fees are denied;

- 3.) Claimants' claim, as amended, is dismissed without prejudice against respondent Landmark International Equities;
- 4.) Claimants' claim, as amended, is dismissed against Respondents Kelly S. Reinsmith, Martin H. Drayer, Paul F. Italia, and Gregory F. Mazzeo consistent with any provisions thereto in the stipulation(s) relating to their dismissal entered into by Claimants;
- 5.) Claimants claim, as amended, is dismissed on the merits against Respondents William Nunziato and Howard B. Berger;
- 6.) Forum Fees are assessed against Respondent Eric J. Aronson;
- 7.) Any disbursements incurred during hearing, including and in addition to conference call and speaker phone fees shall be borne by the respective party incurring such expense(s);
- 8.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 9.) That any relief not specifically enumerated is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

| | |
|--------------------------|------------|
| Initial claim filing fee | = \$200.00 |
|--------------------------|------------|

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$0 (per panel's determination that Landmark not served)

Adjournment Fees

Adjournments requested during these proceedings:

| | |
|--|-----------------------|
| July 30, 31, 1997, adjournment by Claimants | = \$ 750.00 (waived) |
| May 19, 20, 21, 1998, adjournment by Claimants | = \$1,000.00 (waived) |
| November 4, 5, 6, 1998, adjournment by Claimants | = \$1,000.00 (waived) |
| December 9, 10, 11, 1998, adjournment by Berger | = \$ 750.00 |
| April 27, 28, 1999, adjournment by Berger | = \$1,000.00 |

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

| | |
|---|--------------|
| One (1) Pre-hearing session with a single arbitrator x \$300.00 | = \$300.00 |
| Pre-hearing conference: July 14, 1997 1 session | |
| Two (2) Pre-hearing sessions with Panel x \$750.00 | = \$1500.00 |
| Pre-hearing conferences: December 11, 1998 1 session | |
| April 23, 1999 1 session | |
| Four (4) Hearing sessions x \$750.00 | = \$3,000.00 |
| Hearing Date(s): August 31, 1999 2 sessions | |
| September 1, 1999 2 sessions | |
| Total Forum Fees | = \$4,800.00 |

The Panel has assessed \$4,800.00 of the forum fees solely to Respondent Eric J. Aronson.

Fee Summary

Claimants, Daniel Hawkinson and Judith Hawkinson, be and hereby are jointly and severally liable for:

| | |
|-----------------------------------|------------|
| <u>Initial Filing Fee</u> | = \$200.00 |
| Balance Due NASD Regulation, Inc. | = \$200.00 |

Respondent, Eric J. Aronson, be and hereby is solely liable for:

| | |
|-----------------------------------|---------------|
| <u>Forum Fees</u> | = \$ 4,800.00 |
| Total Fees | = \$ 4,800.00 |
| <u>Less payments</u> | = \$ 0.00 |
| Balance Due NASD Regulation, Inc. | = \$ 4,800.00 |

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-5178
Award Page 6 of 6

Respondent, Howard Brett Berger, be and hereby is solely liable for:

| | |
|--|---------------|
| <u>Adjournment Fee</u> | = \$ 1,750.00 |
| <u>Total Fees</u> | = \$ 1,750.00 |
| <u>Less payments</u> | = \$ 0.00 |
| <u>Balance Due NASD Regulation, Inc.</u> | = \$ 1,750.00 |

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

Concurring Arbitrators' Signature(s)

Michael B. Laikin, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Fredric R. Dichter, J.D.
Public Arbitrator

10/7/99

Signature Date

Ramona V. Larson
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-5178
Award Page 6 of 6

NATIONAL ASSOCIATION
OF SECURITIES DEALERS
RECEIVED
OCT 14 1999

Respondent, Howard Brett Berger, be and hereby is solely liable for:

| | |
|-----------------------------------|---------------|
| <u>Adjournment Fee</u> | = \$ 1,750.00 |
| Total Fees | = \$ 1,750.00 |
| <u>Less payments</u> | = \$ 0.00 |
| Balance Due NASD Regulation, Inc. | = \$ 1,750.00 |

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

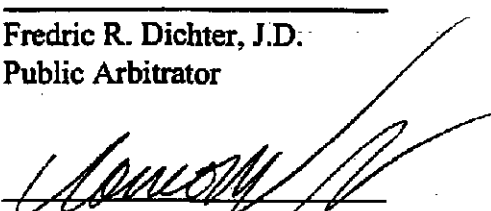
Concurring Arbitrators' Signature(s)

Michael B. Laikin, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Fredric R. Dichter, J.D.
Public Arbitrator

Signature Date



Ramona V. Larson
Industry Arbitrator

10/9/99
Signature Date

Date of Service (For NASD office use only)

10/11/99 08:46 FAX 14142726921

MICHAEL B LAIKIN

0008

10/08/99 WED 15:11 FAX

NASD REGULATION

0008

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-5178
Award Page 4 of 6

Respondent, Howard Brett Berger, be and hereby is solely liable for:

| | |
|-----------------------------------|---------------|
| Adjudgment Fee | = \$ 1,750.00 |
| Total Fees | = \$ 1,750.00 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Regulation, Inc. | = \$ 1,750.00 |

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

Concurring Arbitrators' Signature(s)



Michael B. Laikin, Esq.
Public Arbitrator, Presiding Chair

October 8, 1999
Signature Date

Fredric R. Dichter, J.D.
Public Arbitrator

Signature Date

Ramona V. Larson
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)