

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Tri-County Distributors, Inc. Profit Sharing Plan, Hubert W. Salomonson as Trustee (Claimant)
v. Gaines Berland, Inc., Michael Chakos, and Douglas Costabile (Respondents)

and

Tri-County Distributors, Inc. Profit Sharing Plan, Hugh Salomonson and Stephen Salomonson,
as Trustees (Claimant) v. Gaines Berland, Inc., Michael Chakos, and Douglas Costabile
(Respondents)

Case Number: 98-03907 (consolidated w/99-02309)

Hearing Site: Boston, Massachusetts

Nature of the Dispute: Customer v. Member and Associated Persons (98-03907).
Customer v. Member and Associated Persons (99-02309).

REPRESENTATION OF PARTIES

Claimant Tri-County Distributors, Inc. Profit Sharing Plan, Hugh Salomonson and Stephen Salomonson, as Trustees ("Tri-County Distributors") hereinafter referred to as "Claimant": Kevin G. Diamond, Esq., Goguen, McLaughlin, Richards & Mahaney, LLP, South Natick, MA. Previously represented by: Joseph Carmichael, Esq., Salem, MA and Frank J. Liberty, Esq., Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, P.C., New London, CT.

Respondents Gaines Berland, Inc. ("Gaines") and Michael Chakos ("Chakos"): Mark Astarita, Esq., Beam & Astarita, LLC, Bloomfield, NJ. Previously represented by: Mark Astarita, Esq., Gusrae, Kaplan & Bruno, New York, NY.

Respondent Douglas Costabile ("Costabile") appeared *pro se*. Previously represented by: M. David Sayid, Esq., Sayid and Associates, New York, NY.

Gaines, Chakos, and Costabile are hereinafter collectively referred to as "Respondents".

CASE INFORMATION

98-03907

Statement of Claim filed on or about: October 19, 1998.

Claimant signed the Uniform Submission Agreement: September 10, 1998.

Joint Statement of Answer and Motion for a More Definite Statement filed by Respondents

Gaines and Chakos on or about: January 18, 2000.
Respondent Gaines did not sign the Uniform Submission Agreement.
Respondent Chakos did not sign the Uniform Submission Agreement.

Statement of Answer filed by Respondent Costabile on or about: November 8, 1999.
Respondent Costabile did not sign the Uniform Submission Agreement.

99-02309

Statement of Claim filed on or about: May 17, 1999.
Claimant signed the Uniform Submission Agreement: July 14, 1999.

Statement of Answer filed by Respondent Costabile on or about: November 8, 1999.
Respondent Costabile did not sign the Uniform Submission Agreement.

Respondents Gaines and Chakos did not file a Statement of Answer or sign the Uniform Submission Agreement.

CASE SUMMARY

98-03907

Claimant asserted the following causes of action: negligent or false misrepresentations; churning; unsuitability; unauthorized trading; breach of fiduciary duty; and unfair trade practices. The causes of action relate to common stocks and warrants.

Unless specifically admitted in their Answer and Motion for a More Definite Statement, Respondents Gaines and Chakos denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Costabile denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

99-02309

Claimant asserted the following causes of action: unsuitability; omissions; breach of fiduciary duty; negligence; misrepresentation; unauthorized trading; violations of federal and state statutes. The causes of action relate to unspecified securities.

Unless specifically admitted in his Answer, Respondent Costabile denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

98-03907

Claimant requested compensatory damages in the amount of \$176,000.00.

Respondents Gaines and Chakos requested that the Panel dismiss the proceeding in its entirety, or alternatively, grant the Motion for a More Definite Statement; costs, disbursements, and attorneys' fees; that forum fees be assessed against Claimant; and such other and further relief as the Panel deems appropriate.

Respondent Costabile requested that the Statement of Claim be denied in its entirety; costs, fees, expenses, and reasonable attorneys' fees; and such other and further relief as justice and equity require.

99-02309

Claimant requested unspecified compensatory damages, including interest; attorneys' fees and costs pursuant to ERISA, 29 U.S.C. § 1132(g)(1); and such other legal and equitable relief as the Panel deems just and proper.

Respondent Costabile requested that the Statement of Claim be denied in its entirety; costs, fees, expenses, and reasonable attorneys' fees; and such other and further relief as justice and equity require.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about November 10, 1999, the parties made a joint request that NASD Dispute Resolution ("NASD DR") Arbitration No. 98-03907 be consolidated with NASD DR Arbitration No. 99-02309. On or about February 2, 2000, NASD DR notified the parties that the Director of Arbitration considered the consolidation of these two cases and the Director determined to grant the request for consolidation.

On or about June 3, 2004, Claimant dismissed its claims against Respondent Chakos.

Claimant also dismissed its claims against Respondent Costabile.

On or about July 1, 2004, the remaining parties notified NASD DR that they resolved this matter

pursuant to a written settlement agreement, and that all claims against all of the Respondents have now been dismissed and resolved. On or about November 4, 2004, the parties requested entry of a Stipulated Award.

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

AWARD

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. In full settlement of this matter, the claims of Claimant are denied in their entirety, and same are dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Michael Chakos' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Chakos must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

<u>98-03907</u>	
Initial claim filing fee	= \$200.00
<u>99-02309</u>	
Initial claim filing fee	= \$250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, Gaines Berland, Inc. is a party.

98-03907

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$2,500.00
Total Member Fees	= \$4,600.00

99-02309

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, Gaines Berland, Inc. is a party.

Member Surcharge	= \$1,200.00
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Adjournment Fees

The following adjournment fees are assessed:

May 14-18, 2001, adjournment requested by Respondent Costabile	= \$1,000.00
August 8-10, 2001, adjournment requested by Claimant	= \$1,000.00
March 2-5, 2004, adjournment requested by Gaines	= \$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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Forum fees associated with these proceedings are:

Three (3) Pre-hearing conference sessions with the Panel @ \$1,000.00/session	= \$3,000.00
Pre-hearing conferences:	
October 12, 2000	1 session
December 4, 2002	1 session
April 22, 2003	1 session
Total Forum Fees	= \$3,000.00

1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimant has been assessed \$750.00 of the forum fees.
2. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Gaines has been assessed \$750.00 of the forum fees.
3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Chakos has been assessed \$750.00 of the forum fees.
4. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Costabile has been assessed \$750.00 of the forum fees.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee (98-03907)	= \$ 200.00
Initial Filing Fee (99-02309)	= \$ 250.00
Adjournment Fee	= \$1,000.00
<u>Forum Fees</u>	<u>= \$ 750.00</u>
Total Fees	= \$2,200.00
<u>Less payments</u>	<u>= \$3,200.00</u>
Refund Due Claimant	= \$1,000.00

2. Respondent Gaines is solely liable for:

Member Fees (98-03907)	= \$4,600.00
Member Fees (99-02309)	= \$1,200.00
Adjournment Fee	= \$1,000.00
<u>Forum Fees</u>	<u>= \$ 750.00</u>
Total Fees	= \$7,550.00
<u>Less payments</u>	<u>= \$5,800.00</u>
Balance Due NASD Dispute Resolution	= \$1,750.00

3. Respondent Chakos is solely liable for:

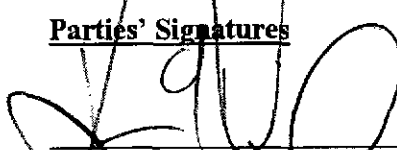
<u>Forum Fees</u>	<u>= \$ 750.00</u>
Total Fees	= \$ 750.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 750.00

4. Respondent Costabile is solely liable for:

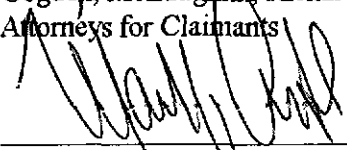
Adjournment Fee	= \$1,000.00
<u>Forum Fees</u>	<u>= \$ 750.00</u>
Total Fees	= \$1,750.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,750.00

All balances are due and payable to NASD Dispute Resolution

Parties' Signatures


Kevin G. Diamond, Esq.
Goguen, McLaughlin, Richards & Mahaney, LLP
Attorneys for Claimants

10-28-04
Signature Date


Mark J. Astarita, Esq.
Beam & Astarita, LLC
Attorneys for Respondents

11-1-04
Signature Date

ARBITRATION PANEL

Melinda Milberg, Esq.	-	Public/Non-Public, Presiding Chair
Robert Titus	-	Public/Non-Public Arbitrator
J. David Crawford	-	Non-Public Arbitrator

Concurring Arbitrators' Signature(s)

Melinda Milberg, Esq.
Chair, Public Arbitrator

Signature Date

Robert Titus
Public Arbitrator

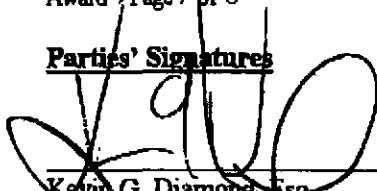
Signature Date

J. David Crawford
Industry/Non-Public Arbitrator

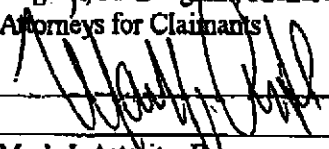
Signature Date

Date of Service of Award: _____

Parties' Signatures


Kevin G. Diamond, Esq.
Goguen, McLaughlin, Richards & Mahaney, LLP
Attorneys for Claimants

10-28-04
Signature Date


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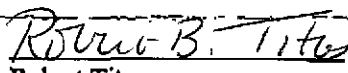
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Melinda Milberg, Esq.	-	Public/Non-Public, Presiding Chair
Robert Titus	-	Public/Non-Public Arbitrator
J. David Crawford	-	Non-Public Arbitrator

Concurring Arbitrators' Signature(s)

Melinda Milberg, Esq.
Chair, Public Arbitrator

Signature Date


Robert Titus
Public Arbitrator

Nov. 13, 2004
Signature Date

J. David Crawford
Industry/Non-Public Arbitrator

Signature Date

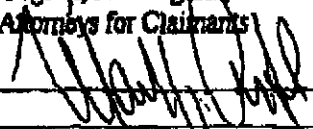
Date of Service of Award: _____

NASD Dispute Resolution, Inc.
Arbitration Nos. 99-02399 and 98-03907
Award, Page 7 of 8

Parties' Signatures


Kevin G. Diamond, Esq.
Goguen, McLaughlin, Richards & Mahaney, LLP
Attorneys for Claimants

10-28-04
Signature Date


Mark J. Astarita, Esq.
Beam & Astarita, LLC
Attorneys for Respondents

11-1-04
Signature Date

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Public/Non-Public, Presiding Chair

Robert Titus

Public/Non-Public Arbitrator

J. David Crawford

Non-Public Arbitrator

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Chair, Public Arbitrator

Signature Date

Robert Titus
Public Arbitrator


Signature Date


J. David Crawford
Industry/Non-Public Arbitrator

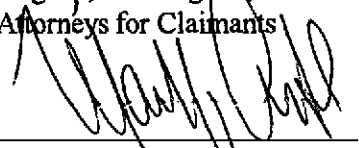
12/15/04
Signature Date

Date of Service of Award _____

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Kevin G. Diamond, Esq.
Goguen, McLaughlin, Richards & Mahaney, LLP
Attorneys for Claimants

10-28-04
Signature Date

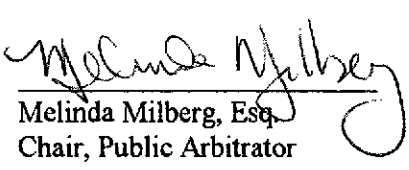

Mark J. Astarita, Esq.
Beam & Astarita, LLC
Attorneys for Respondents

11-1-04
Signature Date

ARBITRATION PANEL

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Robert Titus	-	Public/Non-Public Arbitrator
J. David Crawford	-	Non-Public Arbitrator

Concurring Arbitrators' Signature(s)


Melinda Milberg, Esq.
Chair, Public Arbitrator

12/15/04
Signature Date

Robert Titus
Public Arbitrator

Signature Date

J. David Crawford
Industry/Non-Public Arbitrator

Signature Date

Date of Service of Award: _____

NASD Dispute Resolution
Arbitration No. 98-03907
Award Page 8 of 8

ARBITRATION PANEL

Melinda S. Milberg, Esq.	-	Public Arbitrator, Presiding Chair
Robert Titus	-	Public Arbitrator
J. David Crawford	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

Melinda S. Milberg, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Robert Titus
Public Arbitrator

Signature Date



J. David Crawford
Non-Public Arbitrator



Signature Date

December 23, 2004
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Robert Titus	-	Public Arbitrator
J. David Crawford	-	Non-Public Arbitrator

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Melinda S. Milberg, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Robert B. Titus
Robert Titus
Public Arbitrator

Nov. 13, 2004
Signature Date

J. David Crawford
Non-Public Arbitrator

Signature Date

December 23, 2004

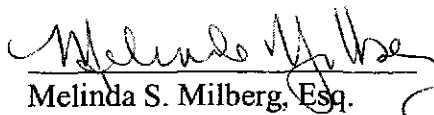
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Robert Titus	-	Public Arbitrator
J. David Crawford	-	Non-Public Arbitrator

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Melinda S. Milberg, Esq.
Public Arbitrator, Presiding Chair

12/10/04

Signature Date

Robert Titus
Public Arbitrator

Signature Date

J. David Crawford
Non-Public Arbitrator

Signature Date

December 23, 2005
Date of Service (For NASD office use only)