

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Bradley Cohn, (Claimant) vs. Gaines, Berland, Inc. and Mark Gussin, (Respondents)

Case Number: 99-01567

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Bradley Cohn, hereinafter referred to as "Claimant": David E. Robbins, Esq., Kaufmann, Feiner, Yamin, Gildin & Robbins LLP, NY.

Respondent, Gaines, Berland, Inc. ("Gaines"): Martin H. Kaplan, Esq., Gusrae, Kaplan & Bruno, New York, NY.

Respondent, Mark Gussin ("Gussin"): Isaac M. Zucker, Esq., Law Offices of Isaac M. Zucker, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: April 2, 1999.

Claimant signed the Uniform Submission Agreement: March 15, 1999.

Statement of Answer filed by Gaines on or about: August 6, 1999.

Gaines signed the Uniform Submission Agreement: March 29, 2000.

Statement of Answer filed by Gussin on or about: August 13, 1999.

Gussin signed the Uniform Submission Agreement: August 13, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: excessive trading and churning; misrepresentations and omissions; and failure to diligently supervise. Claimant's claim involved unspecified equities and covered call options.

Unless specifically admitted in its Answer, Gaines denied the allegations made in the Statement of Claim and asserted the following defenses: Respondents acted at all times in compliance with the applicable rules and regulations, acted in good faith, and did not induce the alleged act or acts, if any, constituting alleged violations of law; the damages alleged by Claimant have no causal relationship with any act committed by or legally attributable to Respondents; Claimant failed to mitigate his damages; the Statement of Claim fails to plead

fraud with the requisite particularity, making it impossible for Gaines to adequately respond to same; the Statement of Claim fails to state a claim or basis upon which relief can be granted; the damages of Claimant, if any, are the proximate result of the culpable conduct of persons and/or entities other than Gaines; the damages of Claimant, if any, are the proximate result of the market conditions and/or other factors beyond the control of Gaines; Claimant is barred from seeking recovery of his damages, if any, by the doctrines of laches, waiver, estoppel, and ratification; and the Statement of Claim seeks relief which is beyond the powers granted to the panel, or which is beyond the scope of arbitral disputes herein, and such relief cannot be granted.

Unless specifically admitted in his Answer, Gussin denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim, and each cause of action contained therein, fails to state a cause of action against Gussin upon which relief can be granted; Claimant assumed the risk of investing in the securities market; the Statement of Claim and each cause of action contained therein is barred by the doctrines of estoppel, unclean hands, ratification, waiver, and/or laches; Claimant, by his specific authorization of the purchase of various securities, has waived any and all claims which he may have against Gussin; Gussin, in discharging his duties, if any, to Claimant, acted in good faith and exercised at least that degree of care, diligence, and skill which an ordinarily prudent person would exercise in similar circumstances and like position; and any losses suffered by Claimant were the results of market conditions and fluctuations normally associated with investments in the securities market.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$253,308.00, plus punitive damages, attorneys' fees, expert costs, and all other arbitration costs.

Gaines did not make any relief requests in its Statement of Answer.

Gussin requested that Claimant's claims be denied in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

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.

AWARD

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

1. Claimant's claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300.00
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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 person at the time of the events giving rise to the dispute. In this matter, Gaines, Berland, Inc. is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,500.00

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. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
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Pre-hearing conference:	April 5, 2000	1 session
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Fourteen (14) Hearing sessions x \$1,125.00	= \$15,750.00
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Hearing Dates:	July 10, 2000	2 sessions
	July 11, 2000	2 sessions
	October 5, 2000	2 sessions

October 6, 2000	2 sessions
October 31, 2000	2 sessions
January 8, 2001	2 sessions
January 9, 2001	2 sessions
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Total Forum Fees	= \$16,875.00

The Panel has assessed all of the forum fees against Gaines.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Gaines, requested tapes, \$210.00.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 1,425.00
Refund Due Claimant	= \$ 1,125.00

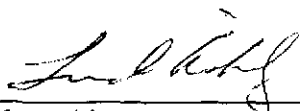
2. Gaines be and hereby is solely liable for:

Member Fees	= \$ 4,600.00
Forum Fees	= \$16,875.00
<u>Administrative Costs</u>	= \$ 210.00
Total Fees	= \$21,685.00
<u>Less payments</u>	= \$ 4,750.00
Balance Due NASD Dispute Resolution, Inc.	= \$16,935.00

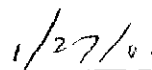
All balances are due and payable to NASD Dispute Resolution, Inc.

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 which is my award.



Linda Ashley, Esq.
Public Arbitrator, Presiding Chair



Signature Date

Rena E. Grossfield
Public Arbitrator

Signature Date

Clifford A. Harwick
Industry Arbitrator

Signature Date

January 29, 2001
Date of Service (For NASD office use only)

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Linda Ashley, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Rena E. Grossfield
Rena E. Grossfield
Public Arbitrator

1/25/01

Signature Date

Clifford A. Hatwick
Industry Arbitrator

Signature Date

January 29, 2001
Date of Service (For NASD office use only)

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Concurring Arbitrators' Signatures

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Linda Ashley, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Rena E. Grossfield
Public Arbitrator

Signature Date



Clifford A. Harwick
Industry Arbitrator

1/29/01

Signature Date

January 29, 2001
Date of Service (For NASD office use only)