

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

The Golden, Lender Financial Group, Inc., (Claimant) vs. Konstantin Tokar, Leon Jack Vinokur, Jean Olson Brutus, Vintok, Inc., R.M. Stark & Co., Inc., Gary Lester Stark, and Henry Neifeld (Respondents) vs. J.P. Gibbons & Co., Inc., Berkshire Securities, Inc., Foster J. Gibbons, Aron Oleg Bronstein, Tomer Matthew Yuzary, and Iosif Pak (Third-Party Respondents)

Case Number: 99-02196

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, The Golden, Lender Financial Group, Inc., hereinafter referred to as "Claimant" or "Golden", did not appear at the hearing in this matter. Previously represented by: Dan A. Druz, Esq., a sole practitioner, Manasquan, NJ and Foster J. Gibbons, Esq., The Golden, Lender Financial Group, Inc., New York, NY, respectively.

Respondents, Konstantin Tokar ("Tokar") and Leon Jack Vinokur ("Vinokur"), did not appear at the hearing in this matter. Previously represented by: Brad S. Maistrow, Esq., Meyers & Maistrow, New York, NY.

Respondents, Jean Olson Brutus ("Brutus") and Vintok, Inc. ("Vintok"), did not make appearances in this matter.

Respondents, RM Stark & Co., Inc. ("RMS"), Gary Lester Stark ("Stark"), and Henry Neifeld ("Neifeld"): Ellen R. P. Adler, Esq., RM Stark & Co., Inc., Delray Beach, FL.

Third-Party Respondents, J.P. Gibbons & Co., Inc. ("JPG"), Berkshire Securities, Inc. ("Berkshire"), Foster J. Gibbons ("Gibbons"), Aron Oleg Bronstein ("Bronstein"), Tomer Matthew Yuzary ("Yuzary"), and Iosif Pak ("Pak"), hereinafter collectively referred to as "Third-Party Respondents", did not make appearances at the hearing in this matter. Previously represented by: Dan A. Druz, Esq., a sole practitioner, Manasquan, NJ.

CASE INFORMATION

Statement of Claim filed on or about: May 12, 1999.

Claimant signed the Uniform Submission Agreement: May 12, 1999.

Statement of Answer filed by Tokar on or about: October 5, 1999.
Tokar signed the Uniform Submission Agreement: October 5, 1999.

Statement of Answer filed by Vinokur on or about: October 5, 1999.
Vinokur signed the Uniform Submission Agreement: October 5, 1999.

Brutus did not file a Statement of Answer or sign a Uniform Submission Agreement.

Vintok did not file a Statement of Answer or sign a Uniform Submission Agreement.

Statement of Answer, Counterclaim, and Third-Party Claim filed by RMS, Stark, and Neifeld on or about: October 5, 1999.

RMS signed the Uniform Submission Agreement: October 5, 1999.

Stark signed the Uniform Submission Agreement: October 5, 1999.

Neifeld signed the Uniform Submission Agreement: October 5, 1999.

JPG did not file a Statement of Answer or sign a Uniform Submission Agreement.

Berkshire did not file a Statement of Answer or sign a Uniform Submission Agreement.

Gibbons did not file a Statement of Answer or sign a Uniform Submission Agreement.

Bronstein did not file a Statement of Answer or sign a Uniform Submission Agreement.

Yuzary did not file a Statement of Answer or sign a Uniform Submission Agreement.

Pak did not file a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unfair competition; intentional interference with business relationships; and intentional infliction of damage to business reputation.

Unless specifically admitted in his Answer, Tokar denied the allegations made in the Statement of Claim and asserted the following defenses: Tokar has never been employed, registered, or associated with RMS, therefore each of the claims against him is without merit and should be denied; Tokar never solicited any of Claimant's customer accounts or attempted to recruit any of Claimant's employees; and Tokar has never published disparaging statements to customers, prospective customers, and employees of Claimant.

Unless specifically admitted in his Answer, Vinokur denied the allegations made in the Statement of Claim and asserted the following defenses: Vinokur never solicited any of Claimant's customer accounts; Vinokur never even solicited the accounts that he had brought with him to Claimant, although it would have been entirely within his rights to do so; Vinokur never attempted to recruit any of Claimant's employees; and Vinokur has never published disparaging statements to customers, prospective customers, and employees of Claimant.

Unless specifically admitted in their Answer, RMS, Stark, and Neifeld denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's Statement of Claim fails to state a claim against RMS, Stark, and Neifeld; Claimant's Statement of Claim is barred by the doctrine of unclean hands; Claimant, by his own affirmative misconduct and/or negligence, is estopped from making claims against RMS, Stark, and Neifeld; Claimant's Statement of Claim is barred by the doctrines of waiver, estoppel, consent, and forfeiture; Claimant's damages, if any, were and are the result of Claimant's own intentional misconduct and/or negligent conduct; the facts and circumstances giving rise to Claimant's Statement of Claim were proximately caused by Claimant's intentional misconduct, dereliction of duty, carelessness, recklessness, and/or negligence; and Claimant's damages, if any, were proximately caused by other of the named Co-Respondents and/or Third-Party Respondents and not RMS, Stark, and Neifeld.

In their Counterclaim and Third-Party Claim, RMS, Stark, and Neifeld asserted the following causes of action: unfair business practices; interference with prospective economic advantage; interference with contractual relationships; tortious, unprivileged, and actionable conduct; and violations of NASD Conduct Rules, NASD Code of Arbitration Provisions, and numerous implied and statutory laws.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$1,000,000.00, plus interest, costs, and attorneys' fees.

Tokar requested that the Statement of Claim be dismissed, and that he be awarded the costs and attorneys' fees incurred by him in this matter.

Vinokur requested that the Statement of Claim be dismissed, and that he be awarded the costs and attorneys' fees incurred by him in this matter.

In their Answer, RMS, Stark, and Neifeld requested:

1. That Claimant take nothing by its Statement of Claim and that the same be summarily dismissed with prejudice;
2. That RMS, Stark, and Neifeld be indemnified by the other Respondents named herein, jointly and severally, for all amounts which Claimant may recover against them;
3. That any judgement against RMS, Stark, and Neifeld be reduced by an amount equal to the total amount of Claimant's losses or damages, if any, incurred as a result of the conduct of Claimant and/or the other Respondents named herein, jointly or severally;
4. That RMS, Stark, and Neifeld recover all relief to which they are entitled by reason of their having to defend against Claimant's Statement of Claim;
5. That RMS, Stark, and Neifeld recover all relief and damages for which they have prayed in their Counterclaim and Third-Party Claim;
6. That RMS, Stark, and Neifeld recover all fees and costs incurred herein; and
7. That RMS, Stark, and Neifeld be awarded such other and further relief as the Panel deems proper.

In their Counterclaim and Third-Party Claim, RMS, Stark, and Neifeld requested:

1. That RMS, Stark, and Neifeld, and each of them, individually and jointly, be awarded compensatory damages in the amount of \$2,000,000.00 against Golden, JPG, Berkshire, Gibbons, Bronstein, Yuzary, and Pak, and each of them, jointly and severally;
2. That RMS, Stark, and Neifeld, and each of them, individually and jointly, be awarded punitive damages in the amount of \$2,000,000.00 against Golden, JPG, Berkshire, Gibbons, Bronstein, Yuzary, and Pak, and each of them, jointly and severally;
3. That Golden, JPG, Berkshire, Gibbons, Bronstein, Yuzary, and Pak, and each of them, jointly and severally, be permanently enjoined from committing and further engaging in the unfair business practices and other wrongdoings hereinabove described against RMS, Stark, and Neifeld, and each of them, individually and jointly;
4. That RMS, Stark, and Neifeld, and each of them, individually and jointly, be awarded attorneys' fees and costs incurred herein; and
5. That RMS, Stark, and Neifeld, and each of them, individually and jointly, be awarded such other and further relief as the Panel deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

Vintok was not a member of NASD, Inc. or an associated person at the time in question, and declined to voluntarily submit to the jurisdiction of NASD Dispute Resolution, Inc. in this matter.

On March 30, 2000, RMS, Stark, and Neifeld filed a Motion to Dismiss Claimant's Statement of Claim, Motion for Default Judgement Against Counterrespondent and Third-Party Respondents, and alternatively, Motion for Summary Judgement Against Claimant, Counterrespondent, and Third-Party Respondents. Neither Golden nor the Third-Party Respondents filed responses to said Motions.

After due consideration, the Panel granted the Motion to Dismiss of RMS, Stark, and Neifeld, ruling that Claimant's case is dismissed in its entirety for failure to appear and/or prosecute the claim.

Upon review of the file and the representations made on behalf of RMS, Stark, and Neifeld, the undersigned arbitrators (the "Panel") determined that Golden, JPG, Berkshire, Gibbons, Bronstein, Yuzary, and Pak have been properly served with the Counterclaim and Third-Party Claim and received due notice of the pre-hearing conferences in this matter, and that arbitration of the matter would proceed without Golden, JPG, Berkshire, Gibbons, Bronstein, Yuzary, and Pak present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

JPG, Berkshire, Gibbons, Bronstein, Yuzary, and Pak did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Gibbons are hereby dismissed in their entirety.
2. Golden, JPG, Berkshire, Bronstein, Yuzary, and Pak be and hereby are jointly and severally liable for and shall pay to RMS, only, the sum of \$25,000.00 as compensatory damages.
3. Golden, JPG, Berkshire, Bronstein, and Yuzary be and hereby are jointly and severally liable for and shall pay to RMS, only, the sum of \$60,000.00 as compensatory damages.
4. All requests for punitive damages are hereby denied.
5. 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	= \$1,250.00
Third-Party Claim filing fee	= \$2,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, The Golden, Lender Financial Group, Inc., R.M. Stark & Co., Inc., J.P. Gibbons & Co., Inc., and Berkshire Securities, Inc. are parties.

The Golden, Lender Financial Group, Inc.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00

R.M. Stark & Co., Inc.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00

J.P. Gibbons & Co., Inc.

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

Berkshire Securities, Inc.

Member surcharge	= \$2,500.00
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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:

Three (3) Pre-hearing sessions with Panel x \$1,200.00	= \$3,600.00
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Pre-hearing conferences:	September 26, 2000	1 session
	November 8, 2000	1 session
	February 23, 2001	1 session

Total Forum Fees	= \$3,600.00
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The Panel has assessed all of the forum fees jointly and severally against Golden, JPG, Berkshire, Bronstein, and Yuzary.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,250.00
<u>Member Fees</u>	= \$2,600.00
Total Fees	= \$3,850.00
<u>Less payments</u>	= \$2,450.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,400.00

2. RMS be and hereby is solely liable for:

<u>Member Fees</u>	= \$2,600.00
Total Fees	= \$2,600.00
<u>Less payments</u>	= \$6,200.00
Refund Due RMS	= \$3,600.00

3. RMS, Stark, and Neifeld be and hereby are jointly and severally liable for:

<u>Third-Party Claim Filing Fee</u>	= \$2,000.00
<u>Total Fees</u>	= \$2,000.00
<u>Less payments</u>	= \$2,000.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

4. JPG be and hereby is solely liable for:

<u>Member Fees</u>	= \$3,100.00
<u>Total Fees</u>	= \$3,100.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,100.00

5. Berkshire be and hereby is solely liable for:

<u>Member Fees</u>	= \$2,500.00
<u>Total Fees</u>	= \$2,500.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,500.00

6. Golden, JPG, Berkshire, Bronstein, and Yuzary be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,600.00
<u>Total Fees</u>	= \$3,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,600.00

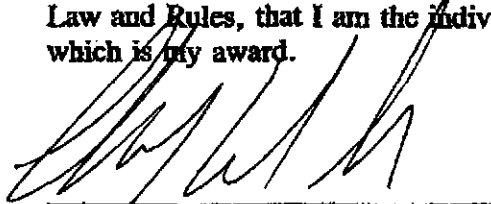
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Anthony Michael Sabino, Esq.	-	Public Arbitrator, Presiding Chair
Michael E. Silverman, Esq.	-	Public Arbitrator
Gregory E. Sohns, Esq.	-	Industry 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 which is my award.



Anthony Michael Sabino, Esq.
Public Arbitrator, Presiding Chair

6-6-2001

Signature Date

Michael E. Silverman, Esq.
Public Arbitrator

Signature Date

Gregory E. Sohns, Esq.
Industry Arbitrator

Signature Date

July 3, 2001
Date of Service (For NASD office use only)

ARBITRATION PANEL


Anthony Michael Sabino, Esq.	-	Public Arbitrator, Presiding Chair
Michael E. Silverman, Esq.	-	Public Arbitrator
Gregory E. Sohns, Esq.	-	Industry Arbitrator

Concurring Arbitrators' Signatures

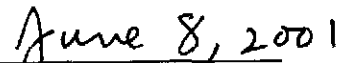
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Anthony Michael Sabino, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Michael E. Silverman, Esq.
Public Arbitrator



Signature Date

Gregory E. Sohns, Esq.
Industry Arbitrator

Signature Date

July 3, 2001
Date of Service (For NASD office use only)

ARBITRATION PANEL

Anthony Michael Sabino, Esq.	-	Public Arbitrator, Presiding Chair
Michael E. Silverman, Esq.	-	Public Arbitrator
Gregory E. Sohns, Esq.	-	Industry Arbitrator

Concurring Arbitrators' Signatures

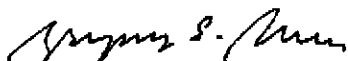
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Anthony Michael Sabino, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Michael E. Silverman, Esq.
Public Arbitrator

Signature Date



Gregory E. Sohns, Esq.
Industry Arbitrator

June 7, 2001

Signature Date

July 3, 2001
Date of Service (For NASD office use only)