

**Award**  
NASD Dispute Resolution, Inc.

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In the Matter of the Arbitration Between:

Mark R. Mueller, (Claimant) vs. Gaines Berland Inc., Alan Gaines and Arthur M. Coffee (Respondents).

Case Number: 99-00076

Hearing Site: Dallas, Texas

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REPRESENTATION OF PARTIES

Claimant, Mark R. Mueller, ("Claimant"): Gerald S. Siegmyer, Esq. and David E. Sharp: Attorney at Law, Houston, Texas.

Respondents, Gaines, Berland, Inc., Arthur Coffee and Alan Gaines ("Respondents"): Mark Astarita, Esq., Beam & Astarita, Bloomfield, N.J.

CASE INFORMATION

Statement of Claim filed on or about: January 7, 1999.

Mark R. Mueller signed the Uniform Submission Agreement: February 8, 1999.

Statement of Joint Answer filed by Respondents, Gaines Berland, Inc., Arthur Coffee and Alan Gaines on or about: April 27, 1999.

Respondent, Gaines Berland, Inc. signed the Uniform Submission Agreement: May 4, 1999.

The NASD has no record that Respondent, Arthur Coffee, signed the Uniform Submission Agreement.

The NASD has no record that Respondent, Alan Gaines, signed the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted causes of action including the following: Breach of Fiduciary Duty, Violations of NASD Rules, Violation of Rule 10b-5, Violation of the Texas Securities Act, Article 581, Section 33, Violation of the Texas Deceptive Trade Practices Act, Negligent Misrepresentation, Fraud, Violation of Section 27.01 of

the Texas Business and Commerce Code, Failure to Supervise and Control Person Liability. The causes of action relate to the purchase and sale of U. S. Energy, National Energy Group, Bellweather Exploration, APS Holding, Marine Drilling, and Infinity, Inc., stock.

Unless specifically admitted in their Joint Answer, Respondents Gaines Berland, Inc. , Arthur Coffee and Alan Gaines denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's failure to timely object to any of the transactions of which he complains constitutes a ratification of these transactions and a waiver or estoppel of Claimant's right to any recovery sought in the Statement of Claim; Claimant's claims are barred by all applicable statutes of limitations; The 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 any alleged violations of law; and the damages of Claimant, if any, are the proximate result of the market conditions and/or other factors beyond the control of the Respondents, and Claimant is therefore barred from seeking recovery thereof from Respondents.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$1, 778, 000.00
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief:	unspecified

Respondents requested:

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief:	unspecified

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Alan Gaines and Arthur M. Coffee did not file with the NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Arbitration 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, the Arbitration Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents Gaines Berland, Inc., Arthur Coffee and Alan Gaines are hereby jointly and severally liable for and shall pay Claimant Mark Mueller compensatory damages of two hundred and fifty thousand dollars (\$250,000.00);
2. That Respondents Gaines Berland, Inc., Arthur Coffee and Alan Gaines are hereby jointly and severally liable for and shall pay Claimant Mark Mueller attorney's fees of one hundred thousand dollars (\$100,000.00). In making this award of attorney's fees the panel reviewed and considered all pleadings, documents, briefs, exhibits and oral arguments of counsel including but not limited to Section 38.001 TX. Civ. Prac. Rem. Code, TX Sec. Act. Ar. 581 VATCS, Section 33 TX DTPA, and Section 27.01 TX Bus. Comm. Code and find that authority exists for this award; and
3. That Respondents Gaines Berland, Inc., Arthur Coffee and Alan Gaines are hereby jointly and severally liable for and shall pay Claimant Mark Mueller costs of twenty two thousand nine hundred and twenty one dollars and sixty five cents (\$22,921.65). In making this award of costs the panel reviewed and considered all pleadings, documents, briefs, exhibits and oral arguments of counsel including but not limited to Section 38.001 TX. Civ. Prac. Rem. Code, TX Sec. Act. Ar. 581 VATCS, Section 33 TX DTPA, and Section 27.01 TX Bus. Comm. Code and find that authority exists for this award; and
4. That any and all requests for relief not specifically addressed herein, including punitive damages, are hereby dismissed and denied in their entirety.

### 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	= \$250.00
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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, the member firm is a party the Respondent's firm.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$4,500.00

Adjournment Fees

Adjournments requested during these proceedings:

April 3, 2000, adjournment by Claimant Mark K. Mueller = \$0  
(Fee of \$1000.00 was waived by the Chairman.)

Forum Fees and Assessments

The Arbitration 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 a single arbitrator x \$450.00	= \$450.00
Pre-hearing conference: October 26, 2000	1 session
One (1) Pre-hearing session with Panel x \$1000.00	= \$1,000.00
Pre-hearing conference: August 31, 1999	1 session
Eleven (11) Hearing sessions x \$1000.00	= \$11,000.00
Hearing Date(s): November 6, 2000	2 sessions
November 7, 2000	2 sessions
November 8, 2000	3 sessions
November 9, 2000	2 sessions
November 10, 2000	2 sessions
<hr/> Total Forum Fees	<hr/> = \$12,450.00

1. The Arbitration Panel has assessed \$12,450.00 of the forum fees jointly and severally to Respondents Gains Berland, Inc., Alan Gaines and Arthur Coffee.

Fee Summary

1. Claimant, Mark R. Mueller, be and hereby is solely liable for:

Initial Filing Fee	= \$250.00
Adjournment Fee (\$1000.00 waived)	= \$0
<u>Forum Fees</u>	<u>= \$1000.00</u>
Total Fees	= \$1,250.00
<u>Less payments</u>	<u>= \$2,800.00</u>
Refund Due Claimant	= \$1,550.00

2. Respondents, Gains Berland, Inc., Alan Gaines and Arthur Coffee be and hereby are jointly and severally liable for:

Forum Fees	= \$12,450.00
<u>Administrative Costs</u>	<u>= \$0</u>
Total Fees	= \$12,450.00

<u>Less payments</u>	= \$0
Balance Due NASD Dispute Resolution, Inc.	= \$12,450.00

3. Respondent, Gaines Berland, Inc., be and hereby is solely liable for:

<u>Member Fee</u>	= \$7,600.00
<u>Total Fees</u>	= \$7,600.00
<u>Less payments</u>	= \$7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$0

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signature

/s/ Ray L. Cox

February 6, 2001

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Ray L. Cox  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

/s/ Priscillia Kim Park

February 12, 2001

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Priscilla Kim Park  
Public Arbitrator

\_\_\_\_\_  
Signature Date

/s/ William Connally

February 7, 2001

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William Connally  
Industry Arbitrator

\_\_\_\_\_  
Signature Date


<u>Less payments</u>	= \$0
Balance Due NASD Dispute Resolution, Inc.	= \$12,450.00

3. Respondent, **Gaines Berland, Inc.**, be and hereby is solely liable for:

<u>Member Fee</u>	= \$7,600.00
<u>Total Fees</u>	= \$7,600.00
<u>Less payments</u>	= \$7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$0

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signature

  
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Ray L. Cox  
Public Arbitrator, Presiding Chair

2/6/01  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Priscilla Kim Park  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
William Connally  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

Less payments = \$0  
Balance Due NASD Dispute Resolution, Inc. = \$12,450.00

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Total Fees = \$7,600.00  
Less payments = \$7,600.00  
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Ray L. Cox  
Public Arbitrator, Presiding Chair



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Priscilla Kim Park  
Public Arbitrator

\_\_\_\_\_  
Signature Date

2/12/01  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
William Connally  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

Less payments = \$0  
Balance Due NASD Dispute Resolution, Inc. = \$12,450.00

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Member Fee = \$7,600.00  
Total Fees = \$7,600.00  
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Ray L. Cox  
Public Arbitrator, Presiding Chair

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Signature Date

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Priscilla Kim Park  
Public Arbitrator

\_\_\_\_\_  
Signature Date

William Connally  
William Connally  
Industry Arbitrator

2 - 7 - 01  
Signature Date