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Here We Go Again

Sands Bros., Generex Still In Spat Over NYSE Arb Decision

Generex Pharmaceuticals and one of its financial advisers, investment bank **Sands Brothers & Co**, will duke it out again in the **New York Supreme Court** over a recent arbitration award in Sands favor. The Big Board decision comes as the latest in a string of legal battles over a financial consulting agreement the arb panel found requires the company to issue warrants to Sands for the purchase of Generex stock, giving Sands 17% ownership of the company. Sands claimed breach of contract when Generex did not want to issue the warrants.

The case was originally ruled on in a 1999 arbitration, but the **New York Supreme Court Appellate Division** ordered the arbitration panel to revisit its original award to clear up some unenforceable aspects of the decision. Last month the panel determined the only outstanding aspect of its September 1999 award to a was the issuing of the warrants and 17% share of ownership, which is found to be "boilerplate provisions established by custom and usage in the financial community." Generex, now **Generex Biotechnology**, said that the latest attempt by the arb panel again doesn't jibe with the order of the appellate court.

Paul Bschorr, partner at **Dewey Ballantine** in New York, who represented Generex, said the panel was required to determine that the only outstanding issues were boilerplate, Bschorr said, adding there was a clause in the contract between Generex and Sands Brothers requiring terms of the warrants to be agreed to by both parties and their respective counsels, which never happened. Bschorr said Judge Charles Ramos of the N.Y. Supreme Court gave no indication of when he would decide on the current motion by Sands to confirm the award and cross-motion by Generex to vacate. If the decision is confirmed, it would give greater weight to the enforceability of investment banking contracts, said **Richard Roth**, partner at **Littman Krooks & Roth** in New York, who is representing Sands in the matter.

Bill Singer, partner with **Singer Frumento** in New York who is not involved with the case, said it was obvious what the arbitration panel meant in its 1999 award, but panels have to say what they mean and be clear. The dangers of the court's criticisms that the award was unenforceable are that arbitration decisions will get shorter, because the more panels write the more they get criticized, he noted.