



Daniel B. Berman

Partner



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Daniel B. Berman is the Chair of the Litigation Department. He has more than 35 years of experience litigating cases throughout New York. After a decade of trying personal injury cases, primarily as insurance defense counsel, Mr. Berman shifted his main area of practice to representing clients in business and commercial litigation matters. His practice is now focused on the litigation and resolution of business and professional disputes for clients ranging from global banking institutions to individuals operating local small businesses. With 23 years of experience as a member of the American Arbitration Association's Commercial Arbitration Panel, he is also able to provide clients with the resolution of even the most complex disputes.

PRACTICE AREAS

- Litigation
- Bankruptcy & Creditors' Rights
- Alternative Dispute Resolution
- Commercial Litigation
- Professional Liability
- Construction
- Health Care

REPRESENTATIVE MATTERS

- Prosecuted an action on behalf of a regional hospital for breach of contract and declaratory judgment (regarding the interpretation of contract provisions governing the reimbursement rate due the hospital for services rendered to patients insured by Excellus Blue Cross/Blue Shield) which resulted in additional revenues to the hospital in excess of \$9 million.
- Defended a global banking organization in an action seeking specific performance and lender liability damages, in connection with the bank's refusal to continue advancing construction funding for the expansion of a regional shopping center. The action was settled with no further funds advanced.
- Defended a regional hospital client in an action seeking in excess of \$500,000 damages for a breach of a hospital services agreement under which the hospital retained the plaintiff to operate its mental health unit. On the eve of trial, the plaintiff discontinued in exchange for the payment of nominal damages (\$10,000).
- Prosecuted an action by a major Central New York manufacturer against a regional machine tool manufacturer for breach of contract/warranty in the failure to properly design and build a set of computerized assembly machines. On the eve of trial, the action was settled by an agreement under which all of the machines were placed online and our client paid approximately one half of the contract price.
- Successfully defended a Big Four accounting firm in a putative class action alleging violations of federal securities law and New York law brought in by the United States District Court for the Northern District of New York. Following the dismissal of the securities law causes of action with prejudice, the putative class recommenced the action on their remaining New York law claims in the New York State Supreme Court. That action was removed to

the United States District Court pursuant to the Class Action Fairness Act, and ultimately dismissed following a successful appeal to the United States Circuit Court of Appeals of the district court's remand order.

- Served as lead litigation counsel for 17 banking institutions, defending fraudulent conveyance/avoidance actions brought by the Chapter 11 Trustee for the Bennett Funding Group, alleged at the time to be the largest Ponzi scheme in U.S. history.
- Prosecuted and recovered judgment together with attorney's fees of a fraudulent conveyance action in the United States District Court for the Northern District of New York against the former CEO of a bankrupt Central New York computer leasing company, his wife and his son, on behalf of the Chapter 11 trustee.
- Represented the founder and 50 percent shareholder of an industrial supply company in a dissolution action pursuant to Article 11 of the New York Business Corporation Law, which resulted in the purchase of our client's interest in the corporation for more than \$20 million (which was about one and one-half times the appraised value of the entire company).
- Successfully defended the founders of a startup employee benefit consulting firm, in defense of an action seeking to enforce a covenant not to compete and non-solicitation provisions. We moved quickly to prevent the issuance of a temporary restraining order and preliminary injunction which would have prevented the firm from accepting initial contracts. The action was ultimately dismissed and the firm is now well established throughout New York State.
- Successfully defended a corporate trustee in an accounting action in which the trust beneficiaries claimed violations of the Prudent Investor Rule.
- Successfully prosecuted the executor in an accounting action where it was established that the executor had converted stock owned by the estate and invested the proceeds, in excess of \$300,000, on her own behalf.
- Obtained an order from the United States District Court for the Western District of New York, staying a proposed class action, alleging violations of the Truth in Lending Act, and compelling arbitration on behalf of a major credit card issuer.

REPORTED DECISIONS

- *Complete Truck and Equipment Sales, Inc., Canada v. Alex Lyon & Son Sales Managers & Auctioneers, Inc.*, 2010 WL 1006649 (N.D.N.Y. 2010)
- *Pew v. Cardarelli*, 2009 WL 3165759 (N.D.N.Y. 2009)
- *Dumanis v Citibank (South Dakota), N.A.*, 2007 WL 3253975 (W.D.N.Y. 2007)
- *Papworth v. Steel Hector & Davis*, 2007 WL 2903944 (N.D.N.Y. 2007)
- *Agway, Inc. Employees' 401(k) Thrift Investment Plan, v. Magnuson*, 2006 WL 2934391 (N.D.N.Y. 2006)
- *Pew v. Cardarelli*, 2005 WL 3817472 (N.D.N.Y. 2005)
- *The Bennett Funding Group, Inc., v. Sprague National Bank*, 2000 WL 33711450 (2d Cir BAP, 2000)
- *In re Farley*, 186 Misc. 2d 355, 717 N.Y.S.2d 500 (Surr. Ct. Onondaga 2000)
- *Hassett v. Goetzmann*, 10 F. Supp. 2d 181 (N.D.N.Y. 1998)

RECOGNITIONS AND HONORS

- Rated, AV Preeminent, Martindale - Hubbell
- Fellow, Litigation Counsel of America
- Selected, New York - Upstate, Super Lawyers

PROFESSIONAL AND COMMUNITY ACTIVITIES

- Director and First Vice President, Legal Aid Society of Mid New York, Inc. (Member of Executive and Audit and Finance Committees)
- Director and First Vice President, Legal Services of Central New York, Inc. (Member of Executive and Audit and Finance Committees)
- Member, Syracuse Stage Board of Trustees
- Member, New York State Academy of Trial Lawyers
- Member, Northern District of New York Federal Bar Association
- Former Commercial Arbitration Panel Member, American Arbitration Association
- Past Co-Chair, Onondaga County Bar Association, Trial Lawyers Section
- Former Adjunct Professor of Law, Syracuse University College of Law

SPEAKING ENGAGEMENTS

- New York State Bar Association, "Expert Testimony - What You Need to Know in New York" (Fall 2010)
- New York State Bar Association, "Successfully Handling an Examination under SCPA 1404" (Spring 2008)

PRESS AND PUBLICATIONS

- "[When a Rare Willful Exaggeration Find Allows a Significant Damages Award](#)", *Associated Builders and Contractors' Empire State Chapter Progress! Magazine*, December 2012

EDUCATION

- Syracuse University College of Law, J.D., *cum laude*, 1982
 - Justinian Honor Society
- Michigan State University, B.S., 1979

ADMISSIONS

- New York
- United States District Court (NDNY)
- United States District Court (WDNY)