

N.A.S.D. REGULATION, INC. AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Edmund Larrabee

97-02567

Name of Respondents

A.S. Goldmen & Company, Inc.; and
Thomas Mahan

REPRESENTATION

For Claimant: Edmund Larrabee ("Larrabee") was represented by James J. Eccleston, Esq., of Eccleston & Associates, located in Chicago, Illinois.

For Respondents: A.S. Goldmen & Company, Inc. ("A.S. Goldmen") was represented by Glenn A. Duhl, Esq., of Siegel O'Connor Schif & Zangari, P.C., located in New Haven, Connecticut. Thomas Mahan did not appear.

CASE INFORMATION

Statement of Claim filed: May 22, 1997.

Claimant's Submission Agreement signed on: June 23, 1997

Statement of Answer filed by Respondent A.S. Goldmen on: August 20, 1997.

Respondent A.S. Goldmen's Submission Agreement signed on: August 6, 1997 by Stuart Winkler, Vice President, A.S. Goldmen & Co., Inc.

Respondent Mahan did not file an executed submission agreement or an answer.

HEARING INFORMATION

Pre-Hearing Conference: May 8, 1998 before One arbitrator.

Hearing Dates/Sessions: June 9, 1998 for Two (2) sessions;
June 10, 1998 for Two (2) sessions; and
June 11, 1998 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant alleged that Respondent Mahan, while employed by or acting as an agent for Respondent A.S. Goldmen, sold unsuitable investments, such as speculative common stocks and warrants, through the use of misrepresentation and omission of material fact. In addition, Larrabee alleged that Respondents engaged in unauthorized trading, and treated the account as a short term trading account and not as the long term investment account Larrabee requested. Based upon the above allegations, Larrabee asserted claims for violations of the Illinois Securities Law of 1953; fraud; breach of fiduciary duty; negligent misrepresentation and negligence. Furthermore, Larrabee asserted liability against A.S. Goldmen for failure to supervise and respondents superior.

Respondent A.S. Goldmen denied the material allegations of the Statement of Claim, asserting several affirmative defenses, including that:

1. Larrabee waived any claims and is estopped from asserting them because of his failure to notify A.S. Goldmen upon receipt of the confirmations and account statements;
2. Larrabee continued to deal with Goldmen and the failure to complain amounts to ratification;
3. A.S. Goldmen's employees acted in a professional manner and in conformity with applicable rules and regulations of the securities industry;
4. The claims are barred by the applicable statute of limitations or by laches;
5. Larrabee assumed the risks of investing in the market and all risks were disclosed to him;
6. The cause of action is barred by the Statute of Frauds; and
7. Any losses were the result of Claimant's conduct or the normal fluctuations of the market.

In addition, A.S. Goldmen asserted a cross-claim against Mahan, asserting that he is

responsible if Larrabee recovers any judgment from A.S. Goldmen.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents for compensatory damages of \$55,148.00; pre-judgment interest at the rate of 10% per annum compounded annually; punitive damages in the sum of \$40,000.00; reasonable attorneys' fees and expenses; costs; post-judgment interest at the rate of 9% per annum; and such other relief as was just.

Respondent requested A.S. Goldmen requested the claims asserted by Claimant be denied; that it be awarded costs and disbursements, including reasonable attorneys' fees; and that in the event an award is entered against A.S. Goldmen, that it recoup the full amount of the judgment from Thomas Mahan.

OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Respondent Mahan did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code"). Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Mahan was not served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent did not receive due notice of the hearing as required under Rule 10315 of the Code. Therefore, the claim and cross-claim against Respondent Thomas Mahan were withdrawn without prejudice by the and the arbitration of the matter proceeded pursuant to Rule 10318 of the Code.

AWARD

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

1. Respondent A.S. Goldmen & Company, Inc. is liable for and shall pay to Claimant Edmund Larrabee the sum of \$25,000.00, plus interest in the amount

of \$5,000.00, for a total of \$30,000.00;

2. In addition, Respondent A.S. Goldmen & Company, Inc. is liable for and shall pay to Claimant Edmund Larrabee the sum of \$50,000.00 in punitive damages. In deciding to award punitive damages, the panel considered the authorities presented in the Statement of Claim, as well as the arguments of the parties, and determined that authority existed for an award of punitive damages to the Claimant;

3. Furthermore, Respondent A.S. Goldmen & Company, Inc. is liable for and shall pay to the Claimant, Edmund Larrabee, the sum of \$20,000.00 as attorneys' fees. In deciding to award attorneys' fees, the panel considered the authorities presented in the Statement of Claim, as well as the arguments of counsel at hearing, and determined that authority existed for an award of attorneys' fees to the Claimant, Edmund Larrabee;

4. The claim and cross claim against Respondent Thomas Mahan are dismissed without prejudice pursuant to the parties withdrawal of the claims without prejudice;

5. The parties shall bear their own costs of arbitration, including any additional attorneys' fees, except for those specifically enumerated herein;

6. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent A.S. Goldmen & Company, Inc. has paid to NASD Regulation, Inc. the \$300.00 member surcharge previously invoiced.

Pursuant to Rule 10319 of the Code, Respondent A.S. Goldmen & Company, Inc. is liable for and shall pay to NASD Regulation, Inc. adjournment fees in the sum of \$750.00, representing \$500.00 for the postponement of the December 9 and 10, 1997 hearing dates and \$250.00 for the joint postponement of the February 24-26, 1998 hearing dates. In addition, Claimant Edmund Larrabee is liable for and shall pay to NASD Regulation, Inc. the sum of \$250.00 for the joint postponement of the February 24-26, 1998 hearing dates.

FORUM FEES

Pursuant to Rule 10332[c] of the Code of Arbitration Procedure, the following Forum Fees are

assessed: One pre-hearing conference x \$300.00 = \$300.00; Six (6) hearing sessions x \$500.00 per session = \$3,000.00; Total forum fees = \$3,300.00.

NASD Regulation, Inc. shall retain the \$150.00 claim filing fee and, as forum fees, the \$500.00 hearing session deposit previously paid by the Claimant, Edmund Larrabee. The Claimant, Edmund Larrabee, is also liable for and shall pay to NASD Regulation, Inc. the sum of \$1,150.00 as forum fees. Respondent A.S. Goldmen & Company, Inc. is liable for and shall pay to NASD Regulation, Inc. the claim filing fee of \$500.00 due for the cross claim and the sum of \$1,650.00 as forum fees.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution

Concurring Arbitrators' Signatures
Name

Date

/s/ Gene L. Waas, M.A., Esq.
Gene L. Waas, M.A., Esq.
Public Arbitrator
Chairperson

July 25, 1998

/s/ David G. Duggan, Esq.
David G. Duggan, Esq.
Public Arbitrator

July 23, 1998

/s/ Edward M. Roob
Edward M. Roob
Industry Arbitrator

July 27, 1998

For ODR Use Only/Date of Decision: August 3, 1998