

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Southfield Investors, Limited Partnership (Claimant) v. Goldman, Sachs & Co., Jack H. Hayflick, Richard M. Sincerbeaux, Jeffrey Goldenberg, Josephine Linden, Bobbie M. Rothberger, Goldman Sachs Asset Management, Goldman Sachs Funds Management, Goldman Sachs International Limited, Goldman Sachs Asset Management International, and Goldman Sachs Asset Management Japan Limited (Respondents)

Case Number: 02-06961

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Claimant Southfield Investors, Limited Partnership ("Southfield") hereinafter referred to as "Claimant": Kenneth Rubinstein, Esq., Olshan Grundman Frome Rosenzweig & Wolosky LLP, New York, NY. Previously represented by Harvey J. Kesner, Esq., Lampf Lipkind Prupis & Petigrow, PA, New York, NY.

Respondents, Goldman Sachs & Co. ("Goldman"), Jack H. Hayflick ("Hayflick"), Richard M. Sincerbeaux ("Sincerbeaux"), Jeffrey Goldenberg ("Goldenberg") and Josephine Linden ("Linden"), hereinafter collectively referred to as "Respondents": Michael J. Dell, Esq., Kramer Levin Naftalis & Frankel, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: November 5, 2002.

Amended Statement of Claim filed on or about: June 28, 2004.

Claimant signed the Uniform Submission Agreement: November 13, 2002.

Joint Statement of Answer filed by Respondents on or about: September 30, 2003.

Respondent Goldman signed the Uniform Submission Agreement: October 6, 2003.

Respondent Hayflick signed the Uniform Submission Agreement: September 18, 2003.

Respondent Sincerbeaux signed the Uniform Submission Agreement: September 17, 2003.

Respondent Goldenberg signed the Uniform Submission Agreement: September 10, 2003.

Respondent Linden signed the Uniform Submission Agreement: September 16, 2003.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, negligence, unsuitable investments, breach of contract, securities, fraud, common law fraud and negligent misrepresentation. The causes of action relate to eToys, Inktomi, Juno, Niku, Onvia, and Universal Access.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 7,409,122.66
Punitive Damages	\$ Unspecified
Interest	\$ Unspecified
Attorneys' Fees	\$ Unspecified
Other Costs	\$ Unspecified

Respondents request that the Panel dismiss the Statement of Claim in its entirety and assess all costs and forum fees against Claimant and their counsel, together with any other further relief that the Panel deems just and proper. Respondents also request that the records of the individual respondents be expunged.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about December 16, 2002, prior to the service of the claim, Claimant withdrew its claims against Respondents Goldman Sachs Asset Management, Goldman Sachs Funds Management, Goldman Sachs International Limited, Goldman Sachs Asset Management International, and Goldman Sachs Asset Management Japan Limited.

On or about, July 19, 2004, Claimant withdrew its claims against Respondents Jeffrey Goldenberg and Josephine Linden.

On or about, November 3, 2003, Claimant withdrew its claims against Respondent Bobbie Rothberger.

The Panel notes that Claimant's counsel, very properly and commendably, withdrew the allegations of fraud against Mr. Hayflick and Mr. Sincerbeaux, and that there was no evidence of such before the Panel.

At the conclusion of Claimant's case, Respondents moved to dismiss the claims against them. The Panel granted Respondents' Motion to Dismiss.

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. Claimant's claims are dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Jack H. Hayflick's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Jack H. Hayflick must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Richard M. Sincerbeaux's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Richard M. Sincerbeaux must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Jeffrey Goldenberg's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Jeffrey Goldenberg must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Josephine Linden's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Josephine Linden must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
6. Any and all relief not specifically addressed herein, including punitive damages is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 600.00
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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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Goldman Sachs & Company is a party.

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

October 11, 13, 15, 18, 20-22, 2004 hearing dates joint adjournment requested	
Claimant's share	= \$ 600.00
Respondents' share	= \$ 600.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: November 19, 2004 1 session	
December 22, 2004 1 session	
Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conference: February 4, 2004 1 session	
October 14, 2004 1 session	
Six (6) Hearing sessions @ \$1,200.00	= \$ 7,200.00
Hearing Dates: June 1, 2005 2 sessions	
June 2, 2005 2 sessions	
June 3, 2005 2 sessions	
Total Forum Fees	= \$10,500.00

1. The Panel has assessed \$5,250.00 of the forum fees to Claimant.
2. The Panel has assessed \$5,250.00 of the forum fees jointly and severally against Respondents Goldman, Hayflick and Sincerbeaux.

**Fee Summary**

1. Claimant Southfield is solely liable for:

Initial Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 5,250.00
Total Fees	= \$ 6,450.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 4,650.00

2. Respondent Goldman is solely liable for:

Member Fees	= \$ 10,000.00
Total Fees	= \$ 10,000.00
Less payments	= \$ 10,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 5,250.00
Total Fees	= \$ 5,850.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,850.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

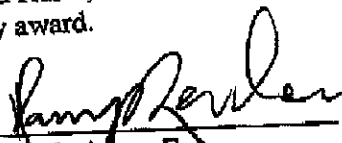
**ARBITRATION PANEL**

Harry Reicher, Esq.  
Richard P. Gitter, Esq.  
Amy Y. Moy

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public 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.

  
\_\_\_\_\_  
Harry Reicher, Esq.

Public Arbitrator, Presiding Chairperson

June 15 05  
\_\_\_\_\_  
Signature Date

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Richard P. Gitter, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Amy Y. Moy  
Non-Public Arbitrator

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

June 21, 2005  
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Date of Service (For NASD Dispute Resolution use only)

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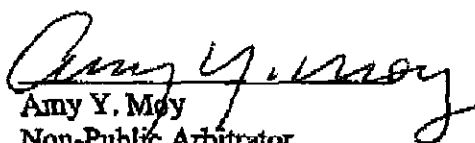
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