

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

---

In the Matter of the Arbitration Between:

Names of the Claimants

Frank B. Wingate  
Debi S. Wingate

Case Number: 04-00635

Name of the Respondent

Goldman, Sachs & Co.

Hearing Site: Atlanta, Georgia

---

Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Frank B. Wingate and Debi S. Wingate, hereinafter collectively referred to as "Claimants": J. Pat Sadler, Esq., Sadler & Hovdesven, P.C., Atlanta, Georgia.

For Goldman, Sachs & Co., hereinafter referred to as "Respondent": Carl S. Burkhalter, Esq. and Joshua D. Jones, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: January 23, 2004.

Claimants signed the Uniform Submission Agreement: January 12, 2004.

Statement of Answer filed by Respondent on or about: April 8, 2004.

Respondent signed the Uniform Submission Agreement: April 29, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: suitability violations; breach of fiduciary duty; negligence and breach of contract; failure to supervise; and, respondeat superior. The causes of action relate to Claimants' holdings in shares of Genrad, Inc.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$11,000,000.00 for losses in Claimants' account, reasonable attorneys' fees in the amount of not less than \$5,500,000.00, interest and the costs of this action, and such other and further relief as the arbitration panel deemed just and appropriate.

Respondent requested that the Statement of Claim be dismissed with prejudice, and Claimants be awarded nothing on their claims against Respondent.

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

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

All claims asserted by Claimants are denied in their entirety.

All parties shall bear their respective costs and attorneys' fees.

Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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
--------------------------	------------

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm 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:

No adjournment fees were incurred in this matter.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$450.00
Pre-hearing conference: December 21, 2004 1 session	
One (1) Pre-hearing session with the Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: June 8, 2004 1 session	
Eight (8) Hearing sessions @ \$1,200.00	= \$9,600.00
Hearing Dates: April 11, 2005 2 sessions	
April 12, 2005 2 sessions	
April 13, 2005 2 sessions	
April 14, 2005 2 sessions	

---

Total Forum Fees	= \$11,250.00
------------------	---------------

The Panel has assessed \$5,625.00 of the forum fees to Claimants, jointly and severally.  
The Panel has assessed \$5,625.00 of the forum fees to Respondent.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

### **FEE SUMMARY**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$600.00
Forum Fees	= \$5,625.00

---

Total Fees	= \$6,225.00
Less payments	= \$1,800.00

---

Balance Due NASD Dispute Resolution	= \$4,425.00
-------------------------------------	--------------

Respondent is solely liable for:

Member Fees	= \$10,000.00
Forum Fees	= \$5,625.00

---

Total Fees	= \$15,625.00
Less payments	= \$10,000.00

---

Balance Due NASD Dispute Resolution	= \$5,625.00
-------------------------------------	--------------

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

**ARBITRATION PANEL**

Harvey R. Linder, Esq.	-	Public Arbitrator, Presiding Chair
Arthur P. Barry, Jr.	-	Public Arbitrator
S. Bennett Whipple	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
Harvey R. Linder, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/S/\_\_\_\_\_  
Arthur P. Barry, Jr.  
Public Arbitrator

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

\_\_\_\_\_/S/\_\_\_\_\_  
S. Bennett Whipple  
Non-Public Arbitrator

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

April 20, 2005

Date of Service (For NASD Dispute Resolution office use only)

APR. 19. 2005 8:04AM NASD DISPUTE RESOLUTION

NASD Dispute Resolution

Arbitration No. 04-00635

Award Page 4

Total Fees	= \$6,225.00
Less payments	= \$1,800.00

Balance Due NASD Dispute Resolution	= \$4,425.00
-------------------------------------	--------------

Respondent is solely liable for:

Member Fees	= \$10,000.00
Forum Fees	= \$5,625.00

Total Fees	= \$15,625.00
Less payments	= \$10,000.00

Balance Due NASD Dispute Resolution	= \$5,625.00
-------------------------------------	--------------

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

**ARBITRATION PANEL**

Harvey R. Linder, Esq.

Arthur P. Barry, Jr.

S. Bennett Whipple

-	Public Arbitrator, Presiding Chair
-	Public Arbitrator
-	Non-Public Arbitrator

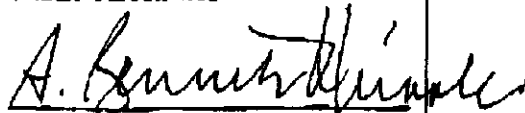
**Consenting Arbitrators' Signatures**

\_\_\_\_\_  
Harvey R. Linder, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Arthur P. Barry, Jr.  
Public Arbitrator

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



S. Bennett Whipple  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

Total Fees	= \$6,225.00
Less payments	= \$1,800.00

---

Balance Due NASD Dispute Resolution	= \$4,425.00
-------------------------------------	--------------

Respondent is solely liable for:

Member Fees	= \$10,000.00
Forum Fees	= \$5,625.00

---

Total Fees	= \$15,625.00
Less payments	= \$10,000.00

---

Balance Due NASD Dispute Resolution	= \$5,625.00
-------------------------------------	--------------

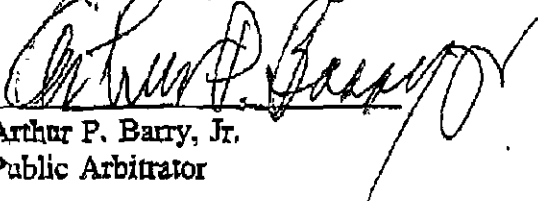
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Harvey R. Linder, Esq.	-	Public Arbitrator, Presiding Chair
Arthur P. Barry, Jr.	-	Public Arbitrator
S. Bennett Whipple	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Harvey R. Linder, Esq.  
Public Arbitrator, Presiding Chair

  
Arthur P. Barry, Jr.  
Public Arbitrator

Signature Date

4-20-05

Signature Date

S. Bennett Whipple  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

Total Fees	= \$6,225.00
Less payments	= \$1,800.00
<hr/>	
Balance Due NASD Dispute Resolution	= \$4,425.00

Respondent is solely liable for:

Member Fees	= \$10,000.00
Forum Fees	= \$5,625.00

Total Fees	= \$15,625.00
Less payments	= \$10,000.00

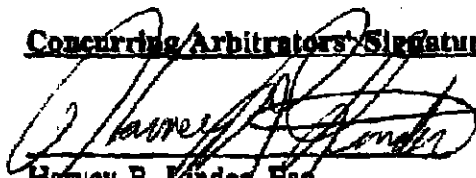
Balance Due NASD Dispute Resolution	= \$5,625.00
-------------------------------------	--------------

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

**ARBITRATION PANEL**

Harvey R. Linder, Esq.	-	Public Arbitrator, Presiding Chair
Arthur P. Barry, Jr.	-	Public Arbitrator
S. Bennett Whipple	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Harvey R. Linder, Esq.  
Public Arbitrator, Presiding Chair

4/19/05  
Signature Date

\_\_\_\_\_  
Arthur P. Barry, Jr.  
Public Arbitrator

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

\_\_\_\_\_  
S. Bennett Whipple  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)