

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

---

In the Matter of the Arbitration Between:

Richard O. Vandenberg, Jr., Claimant vs. Goldman Sachs & Co., Inc., Respondent

Case Number: 04-01552

Hearing Site: San Francisco, California

---

Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant:

Rodney J. Heggy, Esq.  
William B Federman, Esq.  
Federman & Sherwood  
Oklahoma City, Oklahoma

For Respondent:

Robin D. Fessel, Esq.  
Nicole A. Barrett, Esq.  
Christopher R. Edgar, Esq.  
Sullivan & Cromwell LLP  
New York, New York

**CASE INFORMATION**

Statement of Claim filed: March 5, 2004

Claimant's Uniform Submission Agreement filed: March 5, 2004

Statement of Answer filed by Respondent: July 12, 2004

**CASE SUMMARY**

Claimant alleged that when he terminated his employment with Respondent, Respondent unlawfully retained company stock that he was entitled to under his compensation agreement with Respondent. The allegations involved Respondent's 1999 initial public offering.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested \$943,290.00 in compensatory damages, interest, forum fees, and attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety.

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

Respondent did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On February 19, 2004, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On April 8, 2004, Respondent filed a Motion to Decline Jurisdiction. On May 10, 2004, Claimant filed an objection to the aforementioned motion. The panel heard oral argument from the parties during a telephonic pre-hearing conference held on September 2, 2004. Subsequently, the parties submitted supplemental briefs on this motion. On October 8, 2004, the Panel held a telephonic deliberation conference and, after due consideration, granted the motion.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

The Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent's Motion to Decline Jurisdiction is granted. Claimant's claims are dismissed without prejudice.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 375.00
--------------------------	-------------

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Goldman Sachs & Co., Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<b>Total Member Fees</b>	<b>= \$ 3,000.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

1 Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: September 2, 2004 1 session	

---

<b>Total Forum Fees</b>	<b>= \$1,200.00</b>
-------------------------	---------------------

1. The Panel assessed \$600.00 of the forum fees to Claimant.
2. The Panel assessed \$600.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 975.00
Less payments	= \$(1,575.00)
<b>Refund Due Claimant</b>	<b>= \$ (600.00)</b>

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 3,000.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 3,600.00
Less payments	= \$(3,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 600.00</b>

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

**ARBITRATION PANEL**

John Edward Bersin, Esq.	-	Non-Public Arbitrator, Presiding
Albert F. Wulfekuhler, III	-	Non-Public Arbitrator
Edgar N. Stone	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

---

John Edward Bersin, Esq.  
Chair, Non-Public Arbitrator

---

Signature Date

---

Albert F. Wulfekuhler, III  
Non-Public Arbitrator

---

Signature Date

---

Edgar N. Stone  
Non-Public Arbitrator

---

Signature Date

---

Date of Service

NASD Dispute Resolution  
Arbitration No. 04-01552  
Award Page 5 of 5

**ARBITRATION PANEL**

John Edward Bersin, Esq.	-	Non-Public Arbitrator, Presiding
Albert F. Wulfekuhler, III	-	Non-Public Arbitrator
Edgar N. Stone	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

John Edward Bersin, Esq.  
Chair, Non-Public Arbitrator

Signature Date

Albert F. Wulfekuhler, III  
Albert F. Wulfekuhler, III  
Non-Public Arbitrator

10-11-04  
Signature Date

Edgar N. Stone  
Non-Public Arbitrator

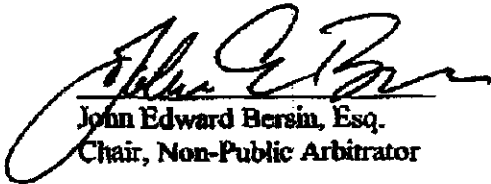
Signature Date

10-11-04  
Date of Service

**ARBITRATION PANEL**

John Edward Bersin, Esq.	-	Non-Public Arbitrator, Presiding
Albert F. Wulfekuhler, III	-	Non-Public Arbitrator
Edgar N. Stone	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures:**

  
John Edward Bersin, Esq.  
Chair, Non-Public Arbitrator

10/11/04  
Signature Date

\_\_\_\_\_  
Albert F. Wulfekuhler, III  
Non-Public Arbitrator

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

\_\_\_\_\_  
Edgar N. Stone  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service

**ARBITRATION PANEL**

John Edward Bersin, Esq.	-	Non-Public Arbitrator, Presiding
Albert F. Wulfekuhler, III	-	Non-Public Arbitrator
Edgar N. Stone	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
John Edward Bersin, Esq.  
Chair, Non-Public Arbitrator

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

\_\_\_\_\_  
Albert F. Wulfekuhler, III  
Non-Public Arbitrator

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

  
\_\_\_\_\_  
Edgar N. Stone  
Non-Public Arbitrator

**10-12-04**  
\_\_\_\_\_  
Signature Date

10/14/04  
Date of Service