

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Hilton B. Forcum

and

92-02236

Name of Respondent

Goldman Sachs and Company

REPRESENTATION OF PARTIES

Hilton B. Forcum ("Claimant") was represented by Kenneth R. Jones, Jr., Esq. and Mary B. Falls, Esq. of Sherrard & Roe, Nashville, Tennessee.

Goldman Sachs and Company ("Respondent") was represented by Thomas W. Rosen, Esq., Goldman Sachs and Company, New York, New York. and William J. Snipes, Esq. of Sullivan & Cromwell, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about July 20, 1992. Submission Agreement of Claimant was signed on July 17, 1992.

Statement of Answer was filed by Respondent on or about September 14, 1992. Submission Agreement of Respondent was signed on August 28, 1992 by Sheldon I. Goldfarb.

HEARING INFORMATION

A pre-hearing conference was held on October 22, 1993.

The hearing was held on Tuesday, May 10, 1994 for two (2) sessions and Wednesday, May 11, 1994 for two (2) sessions in Nashville, Tennessee for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that Respondent Goldman Sachs & Co. violated Federal and State securities laws, as well as its contractual and fiduciary duties to him. Specifically, Claimant alleged that Respondent by and through its employee failed to advise him of certain material facts in

connection with his purchase of Ratners Group plc Variable Term Preferred Stock. Claimant further alleged that the shares of Ratners were not a suitable investment considering all relevant factors, including the Claimant's instructions to the broker, the amount of funds in the Claimant's account, the facts concerning the Claimant's net worth and financial condition, goals and strategy.

Respondent denied the material allegations set forth in the Statement of Claim. Respondent also stated that subsequently to being advised of the relative risks and benefits associated with an investment in U.K. APS, the Claimant authorized the purchase of U.K. APS until he had decided to reinvest some of the funds in other securities. It was stated that the Claimant in fact had purchased APS issued by Elf Aquitaine plc prior to making the investment complained of in this matter. Respondents further stated that prior to the auction scheduled for October 15, 1991, the broker and the Claimant discussed the possibility that the auction would fail, thereby rendering the security illiquid for a period of time. It was stated that the Claimant decided to continue to hold the security.

RELIEF REQUESTED

Claimant requested an award which allows him to rescind the purchase of the Ratners shares and that upon such rescission Goldman be required to pay the Claimant the full purchase price (\$300,000) price for those shares, plus interest; or in the alternative, that Goldman be required to pay him \$300,000 in actual damages, plus interest. Claimant also requested that Goldman be required to pay all costs of the arbitration proceedings, including his reasonable attorney's fees.

Respondent requested that the claims asserted against it be denied in their entirety, and that it be awarded its cost, attorney's fees and such other and further relief deemed just and proper by the arbitrators.

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 original(s) remain on file with the N.A.S.D.

AWARD

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

1. Respondent Goldman Sachs and Company shall be and hereby is liable for and shall pay to the Claimant Hilton B. Forcum the sum of One hundred fifty thousand dollars (\$150,000) as damages.

2. The request for rescission is hereby denied.
3. Each party shall bear their own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.
4. all relief requests not specifically granted are hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were four (4) sessions x \$750 = \$3,000 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant. Claimant shall pay to the NASD the sum of \$750 and Respondent shall pay to the NASD the sum of \$1,500 as the balance due for forum fees.

The NASD shall retain postponement fees in the amount of \$750 previously deposited with the NASD by the Respondent. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Joe C. Loser, Jr.
Joe C. Loser, Jr.
Public Arbitrator, Presiding Chair

July 28, 1994

s/ Norman W. Ginsberg
Norman W. Ginsberg
Public Arbitrator

July 19, 1994

s/ Andrew J. Spurgeon
Andrew J. Spurgeon
Industry Arbitrator

July 18, 1994

Dated: 8/1/94