

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Gregory R. Viola

93-00032

Name of Respondent(s)

A.S. Goldmen & Co.  
Gerardo Salazar

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**REPRESENTATION**

For Claimant: Christopher C. Fountain, Esq.

For Respondent A.S. Goldmen & Co.: Carole Bernstein, Jr., Esq. of Bachner, Tally, Polevoy & Misher.

For Third-Party Respondent Gerardo Salazar: Christopher E. O'Brien of Piper & Marbury.

**CASE INFORMATION**

Statement of Claim filed: January 4, 1993.

Claimant's Submission Agreement signed on: December 30, 1992.

Statement of Answer filed by Respondent, A.S. Goldmen & Co. on: March 1, 1993.

Respondent, A.S. Goldmen & Co.'s Submission Agreement signed on: February 25, 1993.

Statement of Answer filed by Third-Party Respondent, Gerardo Salazar on: December 17, 1993.

Third-Party Respondent Gerardo Salazar's Submission Agreement signed on:  
April 28, 1993.

### HEARING INFORMATION

Hearing Dates/Sessions: November 19, 1993/Two sessions  
February 1, 1994/Two sessions  
February 2, 1994/Two sessions

Hearing Location: NASD offices located in New York City.

### CASE SUMMARY

Claimant alleges that he received a cold call on April 11, 1991 from Third-Party Respondent Gerry Salazar ("Respondent Salazar") who claimed to have a guaranteed investment, Direct Connect which was, he claimed, going to be sold to either MCA or Disney within 60 days. Claimant alleges that he purchased 2000 warrants @ 2.50.

Claimant further alleges that he called Respondent A.S. Goldmen & Co. ("ASGC") to inquire why the warrants had dropped in price and spoke to Michael Caso, who identified himself as the "principal and president of the firm," "Sal Marciano" ("Caso A.K.A. Marciano"). Claimant further alleges that Caso A.K.A. Marciano reassured him that the merger was already public knowledge and later persuaded Claimant to purchase 20,000 additional warrants at \$2.35 each, assuring Claimant that the warrants were guaranteed to increase 150% in less than a month. Claimant further alleges that Caso A.K.A. Marciano called again and persuaded Claimant to purchase an additional 15,000 warrants. Claimant further alleges that two weeks later he called Respondent Salazar to find out why the warrants had dropped to \$2.00 each and that Respondent Salazar told him nothing was wrong, that "Marciano" was just accommodating some of his larger customers by letting them take profits. Claimant alleges that he was reassured by Respondent Salazar's remarks and purchased an additional 10,000 warrants, together with \$9,000 of another "guaranteed" hot issuer, Panmet.

Claimant further alleges that on June 10, 1991, the price of the warrants dropped to 7/8ths and Caso A.K.A. Marciano told him that the warrants were going to be called at 25 cents a share and that Claimant could make up the \$72,000 loss by selling the warrants to Respondent ASGC and putting the proceeds, plus an additional \$10,500 into Panmet. Claimant further alleges that he complied with this suggestion and lost an additional \$4,000.

Claimant further alleges that in 1992 he received a call from Respondent Salazar, who told Claimant that he had not been talking to "Sal Marciano," but had instead

Third-Party Respondent Gerardo Salazar requests that the Third-Party Claim be dismissed in its entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

Third-Party Respondent Salazar made a Motion to Dismiss at the commencement of the hearing. The Panel considered and denied Respondent Salazar's Motion.

### **AWARD**

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

- a) Respondent A.S. Goldmen & Co. is hereby liable and shall pay to Claimant the sum of \$56,875.
- b) Claimant's Claim for interest is hereby denied.
- c) Respondent A.G. Goldmen & Son's Third-Party Claim against Respondent Gerardo Salazar is hereby denied.
- d) Each party shall bear their respective costs, including attorneys' fees.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

6 sessions X \$500 = \$3,000 minus hearing session deposit of \$1,150 (\$800 deposited by Claimant; \$350 deposited by Respondent A.S. Goldmen & Co.) = net \$1,850.

Claimant, Gregory R. Viola is hereby liable and shall pay to the NASD, Inc. forum fees in the amount of \$200.

Respondent A.S. Goldmen & Sons is hereby liable and shall pay to the NASD, Inc. forum fees in the amount of \$650.

Third-Party Respondent, Gerardo Salazar is hereby liable and shall pay to the NASD forum fees in the amount of \$1,000.

been talking to Michael Caso, an unlicensed salesman. Claimant further alleges that Respondent Salazar told him that Respondent ASGC knew that there was no intention on the part of the issuer to call the warrants at 25 cents and that Respondent ASGC's salesmen told customers this falsehood solely to panic them into selling the warrants low.

Claimant alleges that he is entitled to recover under Sections 36-474 and 36-498 of the Connecticut General Statutes. Claimant further alleges that Respondent ASGC's conduct was a direct violation of the "suitability" rule, Article III, Section 2 of the NASD Rules of Fair Practice and that Respondent ASGC failed to supervise the activities of its salesmen in violation of Section 15(b)(4)(E) of the Securities Exchange Act of 1934 and Article III, Section 27(a) of the NASD Rules of Fair Practice.

Respondent A.S. Goldmen & Co. ("ASGC") maintains that Claimant received confirmations and account statements but never notified Respondent ASGC of any complaints arising out of his account and therefore waived his purported claims, failed to mitigate his damages and is estopped from asserting claims against Respondent ASGC. Respondent further maintains that it did not breach any fiduciary duties and acted in good faith, without any knowledge of any alleged improper or fraudulent activity. Respondent further maintains that there is no private right of action under the NASD Rules of Fair Practice.

Respondent ASGC also alleges that Respondent Salazar is liable to Respondent ASGC for the full amount of any award, in the event Claimant recovers judgment against Respondent ASGC.

In response to Respondent ASGC's Third-Party Claim, Respondent Salazar denies each and every allegation of liability on his part and maintains that he always acted in accordance with NASD rules and regulations with respect to Claimant and Respondent ASGC. With regard to the sales of Direct Connect warrants and Pamet[sic], Respondent maintains that he was not present during all of these transactions and denies any liability.

#### **RELIEF REQUESTED**

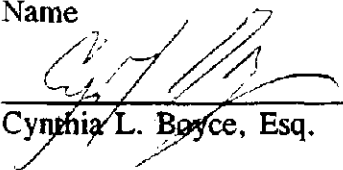
Claimant requests an award for damages in the amount of \$76,785.90, plus interest at 8% in the amount of \$10,350, attorneys' fees in the amount of \$43,564.10 and costs, including filing fees and expert witness fees.

Respondent A.S. Goldmen & Co. requests that the Claim be dismissed in its entirety, plus an award of costs and disbursements, including reasonable attorneys' fees, and, in the event judgment is entered against Respondent A.S. Goldmen & Co, seeks the full amount of such judgment against Respondent Salazar.

Concurring Arbitrators' Signatures

Name

Public/Industry

  
Cynthia L. Boyce, Esq.

Public

Joan Stearns-Johnson, Esq.

Public

Paul J. Camilleri, Esq.

Industry

Date of Decision: April 20, 1994

STATE OF: New York  
COUNTY OF: New York

ARLENE M. COLLINS-DAY  
Notary Public, State of New York  
No. 010471743  
Certificate filed in Kings County  
Commission Expires ~~March 30, 1994~~ *April 30, 1995* S.S.:

On this *18* day of *April*, 1994, before me personally appeared **Cynthia L. Boyce** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

*Arleen M. Collins-Day*

## Concurring Arbitrators' Signatures

Name

Public/Industry

Cynthia L. Boyce, Esq.Public*Joan Stearns-Johnson*  
Joan Stearns-Johnson, Esq.PublicPaul J. Camilleri, Esq.IndustryDate of Decision: April 20, 1994

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 19<sup>th</sup> day of April, 1994, before me personally appeared Joan Stearns-Johnson known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

*Chitralaka J. Low*

CHITRALAKA J. LOW  
Notary Public, State of New York  
No. 24-4994182  
Qualified in Kings County  
Commission Expires April 8, 1996



Concurring Arbitrators' Signatures

Name

Public/Industry

Cynthia L. Boyce, Esq.

Public

Joan Stearns-Johnson, Esq.

Public

*Paul J. Camilleri*  
Paul J. Camilleri, Esq.

Industry

Date of Decision: April 20, 1994

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 15<sup>th</sup> day of April, 1994, before me personally appeared Paul J. Camilleri known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Gail E. Plagano

GAIL E. PLAGANOS  
Notary Public, State of New York  
No. 43-4777620  
Qualified in Richmond County  
Certificate Filed in New York County 1995  
Commission Expires March 30, 19