

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Esther Shurkin

93-00204

Name of Respondents

Ian R. Hosang  
A.S. Goldmen & Co., Inc.

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on January 20, 1993, Claimant Esther Shurkin, who appeared Pro Se, alleged that on December 14, 1992, Ian R. Hosang told Claimant's husband, Israel Shurkin, that he was offering 1,000 shares of Snapple as an initial public offering ("IPO") which would begin to trade on December 15, 1992, at which time, Respondent Ian R. Hosang advised Claimant's husband that the offering price was to be between 17 and 20 dollars a share whereby Claimant's husband accepted the 1,000 shares and repeated to confirm that the shares were "guaranteed" to be in Claimant's account. Claimant further alleged that the next day the share opened at approximately \$30, a \$10.00 increase from the offering price, at which time, Respondent Ian R. Hosang backed out of the trade and Claimant's husband asked Respondent Ian R. Hosang on what basis was he backing out of the trade, whereby Respondent Ian R. Hosang made up all kinds of ridiculous stories. Claimant contended that the fact of the matter is, Claimant was a new client and Respondents A.S. Goldmen & Co., Inc. and Ian R. Hosang had no idea that the stock would open \$10.00 higher and that after the stock opened for trading \$10.00 higher, Respondents decided that Claimant was not worth it.

Respondents A.S. Goldmen & Co., Inc. and Ian R. Hosang, by and through their Vice President, Stuart Winkler, maintained that Respondent Ian R. Hosang, a registered representative since July 1984, called Claimant's husband, Israel Shurkin, to inform him that a new offering of Snapple would be coming out on December 15, 1992 whereby Claimant recently purchased a new issue from Respondents, and the Snapple offering was the hottest new issue of 1992 which was being co-underwritten by Merrill Lynch, Pierce, Fenner & Smith, Inc. and PaineWebber, Incorporated, at which time, all the news written in the financial publications and general press stated that the offering would most likely be priced the night of December 14, 1992 between

\$17-\$20 per share. Respondents further maintained that their Syndicate Department around the country, had notified Merrill Lynch, Pierce, Fenner & Smith, Inc. that they would be interested in receiving 30,000 shares of common stock, at which time, Respondent A.S. Goldmen & Co., Inc. received no shares on this offering. Respondents contended that Respondent Ian R. Hosang has been a broker since 1984 and in no way, shape or form would he guarantee any new issue to any new client prior to the effective date and prior to his being informed by the Syndicate Department how many, if any, shares he received for his clients. Respondents further contended that there was no trade with this client nor any other client at Respondent A.S. Goldmen & Co., Inc. at the initial public offering price at \$20.00 for Snapple, thus the claim should be dismissed.

### **RELIEF REQUESTED**

Claimant Esther Shurkin requested \$10,000.00 in actual damages and Punitive damages.

Respondents A.S. Goldmen & Co., Inc. and Ian R. Hosang requested the claim be dismissed in its entirety.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Mark E. Feierstein, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 11, 1993 and by the Respondents on March 2, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents A.S. Goldmen & Co., Inc. and Ian R. Hosang are jointly and severally liable and shall pay to the Claimant Esther Shurkin the sum of \$10,000.00 in damages.
2. Respondents A.S. Goldmen & Co., Inc. and Ian R. Hosang are jointly and severally liable and shall pay to the Claimant Esther Shurkin simple interest at the rate of 9% per annum from December 15, 1992 to the date of payment of the award.
3. The Claimant's request for Punitive damages is denied.

4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Esther Shurkin shall be retained by the NASD, Inc. Respondents A.S. Goldmen & Co., Inc. and Ian R. Hosang are jointly and severally liable and shall pay to the Claimant the sum of \$150.00, as reimbursement.

**AFFIRMATION**

I, **MARK E. FEIERSTEIN**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
Signature of Arbitrator

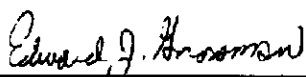
DATE OF DECISION: June 29, 1993

STATE OF: *New York*

ss:

COUNTY OF: *New York*

On this 25<sup>th</sup> day of June 1993, before me personally appeared Mark E. Feierstein, Esq. to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



EDWARD J. GROSSMAN  
NOTARY Public - State of *New York*  
No. 41-2861921  
Qualified in *Queens County*  
Commission Expires *May 19, 1994*