

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Mark E. Horowitz

93-03223

Name of Respondent

A.S. Goldmen & Company

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 18, 1993, Claimant Mark E. Horowitz, who appeared Pro Se, alleged that Respondent A.S. Goldmen & Co., by and through Mr. Greenman, solicited his business by telephone in early June, describing an initial public offering that Respondent was bringing to the market, Babystar, Inc., at which time, Claimant reviewed the prospectus and placed an order for 1,000 units, priced at \$6.00 each. Claimant further alleged that the security began trading on Thursday, June 24, whereby Claimant inquired with Respondent by and through Mr. Greenman about the performance of the stock on the morning of Friday, June 25, at which time the security was trading at 8 1/4 bid, 8 1/2 ask, but the bid declined to 8 during the course of his conversation with Mr. Greenman. Claimant contended that Respondent by and through Mr. Greenman assured him of his optimism about the overall performance of the stock, telling him it would be "trading in double digits" soon and that if Claimant followed his recommendations, Claimant's account "would be worth in the six figures". Claimant further contended that on the morning of June 25, the price had further declined to 7 3/4 bid, at which time, Claimant called Respondent by and through Mr. Greenman when the units were bidding 7 3/4 and asking 8 whereby after being told of the strength of the stock, Claimant asked Mr. Greenman to offer his 1,000 units at 8 and Respondent by and through Mr. Greenman advised him against this order, telling him he could not expect to be filled at this level. Claimant asserted that there was a further drop in the price of the stock, and although the market was still open, Mr. Greenman could not be reached to take an order, at which time, Claimant decided to call him before the start of trading on the morning of Monday, June 28, whereby Claimant placed an order to sell 1,000 Babystar units at 7 3/8 or better with Mr. Greenman's assistant, Steve. Claimant further asserted that he tried to contact Respondent by and through Mr. Greenman but he was unavailable again; however, Claimant

spoke with Steve, who told him he could not confirm the trade and promised to call him right back. Claimant further alleged that when he finally reached Mr. Greenman, he reported that Claimant had sold his units at \$7, at which time, Claimant pointed out that his order was to sell at 7 3/8 or better, whereby Mr. Greenman checked with Steve who told him he had placed the order to sell "at the market" by mistake. Claimant further contended that Mr. Greenman asked Claimant to hold and when he returned to the phone he told Claimant that he had cancelled the trade, at which time, a lengthy conversation ensued, during which time Claimant learned that all of the days trading in the stock had been sales at the bid, at which time, fearing further loss of value, Claimant gave Respondent an order to sell 1,000 Babystar units at \$7 and Mr. Greenman agreed to a commission of 1/8 of a point or \$125.00. Claimant further asserted that several minutes later, Mr. Greenman called him to notify him that he would be able to sell stock, but would have to charge a commission of 5%, or \$350.00, at which time, Claimant protested whereby Mr. Greenman acknowledged that he agreed this was unfair but claimed it was Respondent's policy. Claimant further alleged that at this point, he told Mr. Greenman that he intended to transfer the security to another dealer who could sell it under fairer conditions. Claimant further contended that in summary, when he paid for the securities, they became his property to do with as he pleased and he believes that Respondent was seeking to prevent a freemarket in this security in order to artificially support its falling price whereby Respondent's actions were unethical and Claimant failed to get fair execution of a trade, thus Respondent should be liable for his loss.

Respondent A.S. Goldmen & Co., by and through its Vice President, Stuart Winkler, maintained that they admit that Claimant Mark E. Horowitz opened and maintained an account with Respondent and that the account purchased 1,000 units of Babystar, Inc. at \$6 each; however, Respondent denies all other paragraphs listed in his complaint. Respondent further maintained that Claimant sent the same letter as the Statement of Claim to the NASD Customer Complaint Department in New York whereby the NASD interviewed the broker, received copies of all the records involved, and was satisfied that there was no wrongdoing on the firm's or the registered representative's part. Respondent contended that the District Business Conduct Committee determined no action is warranted regarding the activities of the firm or registered representative, William Greenman, and in fact, during the course of their investigations, it was ascertained that this dispute did not involve any other issue except that Claimant wanted to pay a less than minimum commission on a sell order. Respondent contended that Claimant, in fact, transferred his securities out to his other broker and Respondent cannot ascertain at what price he sold it all, if he did or what commission he paid if he sold it. Respondent further contended that the Statement of Claim fails to state how any damages arose from their only transaction with Claimant, and Claimant appears to have picked an arbitrary number that he believes he's entitled to.

**RELIEF REQUESTED**

Claimant Mark E. Horowitz requested the sum of \$500.00 in actual damages together with costs in the amount of \$4.00.

Respondent A.S. Goldmen & Co. requested the claim be dismissed in its entirety.

**AWARD**

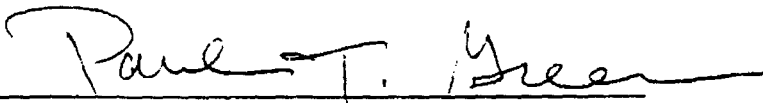
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Paul T. Green, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 9, 1993 and by the Respondent on October 19, 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. The claim of Claimant Mark E. Horowitz against Respondent A.S. Goldmen & Co. is dismissed.
2. The parties shall bear their respective costs.
3. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Mark E. Horowitz shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **PAUL T. GREEN**, 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.

  
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Signature of Arbitrator

DATE OF DECISION: January 11, 1994