

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Floyd W. Kunzler

93-03955

Name of Respondents

A.S. Goldmen & Co.  
Mike Fagen  
Joseph William Donohue

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 29, 1993, Claimant Floyd W. Kunzler, who appeared Pro Se, alleged that he bought 500 shares of Babystar, Inc. common stock from Respondents A.S. Goldmen & Co. and Mike Fagen through an Initial Public Offering at \$6.00 per share, for a total cost of \$3,000.00. Claimant alleged that two days after his initial purchase of Babystar, Inc. stock he instructed Respondents A.S. Goldmen & Co. and Mike Fagen to sell the stock, since it was selling for \$8 3/8 per share. Claimant further alleged that Respondent Mike Fagen said he could not sell the shares because this would be a "free ride" which was unlawful. Claimant contended that Respondent Joseph William Donohue of Respondent A.S. Goldmen & Co. verified that the requested sale would constitute an unlawful "free ride". Claimant further contended that after a heated debate with Respondent Joseph William Donohue, Claimant's purchase of the shares in question was cancelled without authorization by the Claimant. The Claimant contended that as a result of these occurrences, he has suffered damages for which the Respondents should be held liable.

Respondents A.S. Goldmen & Co., Mike Fagen and Joseph William Donohue, through A.S. Goldmen's in-house representative, Stuart Winkler, maintained that six days after Claimant purchased 500 shares of Babystar, Inc. common stock, Claimant informed Respondent Mike Fagen that he wanted to sell his shares of

Babystar, Inc. Respondents maintained that Respondent Joseph William Donahue informed the Claimant that the shares could not be sold because they were not yet paid for, but that once they were paid for, the Claimant could have the total proceeds from the sale of these shares, less any commissions. Respondents further maintained that Claimant gave instructions to cancel the trade entirely, and these instructions were carried out the day they were given. As a result of the above, Respondents maintained that they should not be held liable in this matter.

### **RELIEF REQUESTED**

Claimant requested \$1,185.00 in actual damages, \$3,555.00 in unspecified damages, and \$200.00 in costs.

Respondents requested that the Statement of 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, Martin S. Finn, 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 September 25, 1993, by Respondent A.S. Goldmen & Co. on December 7, 1993, and by Respondent Joseph William Donahue on November 9, 1993. Respondent Mike Fagen did not execute a submission agreement as required by Section 13 of the Code of Arbitration Procedure.

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 claims of Claimant Floyd W. Kunzler against Respondents A.S. Goldmen & Co., Mike Fagen and Joseph William Donohue are dismissed in their entirety.
2. Each party shall bear its own costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

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**AFFIRMATION**

I, **MARTIN S. FINN, ESQ.**, do hereby affirm upon my oath of 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:** May 24, 1994

STATE OF NEW YORK ss.:

COUNTY OF ALBANY

On this 16<sup>th</sup> day of May 1994, before me personally appeared 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.

Mary E. Cole

MARY E. COLE  
Notary Public, State of New York  
No. 01C05023025  
Qualified in Albany County  
Commission Expires January 31, 1996