

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Howard C. Chiten

vs.

Award #  
94-01809

Name of Respondents

A.S. Goldmen & Co.  
Robert Langsam

---

**REPRESENTATION**

For Claimant, Howard C. Chiten ("Claimant"), Edwin R. Chyten, Esq., Esq., located in Chestnut Hill, Massachusetts.

For Respondent, A.S. Goldman & Company ("A.S. Goldman"), Roger Crane, Esq. and Todd B. Marcus, Esq., from the law firm of Bachner, Tally, Polevoy & Misher.

Respondent, Robert Langsam, ("Langsam"), did not appear at the hearing.

**CASE INFORMATION**

Statement of Claim was filed on May 12, 1994.

Claimant's Submission Agreement was signed on May 9, 1994.

Amended Statement of Claim was filed on June 1, 1994.

Second Amended Statement of Claim was filed on August 17, 1994.

Statement of Answer and Cross-Claim were filed by Respondent, A.S. Goldman on July 22, 1994.

Respondent A.S. Goldman's Submission Agreement was signed on July 18, 1994.

Statement of Answer to Amended Statement of Claim was filed on August 18, 1994.

Respondent Langsam did not execute a Submission Agreement or file a Statement of Answer.

**HEARING INFORMATION**

Pre-Hearing Conference: March 23, 1995 - 1 session

Hearing Dates/Sessions:     May 1, 1995               -               2 sessions  
   May 19, 1995               -               1 sessions

Hearing Location: American Arbitration Association, located at 133 Federal Street, Boston, Massachusetts.

### **CASE SUMMARY**

Claimant alleges that he instructed his broker, Respondent Langsam, to sell his 43,000 shares of New5Communication stock at \$4.04 per share. Claimant also alleges that Langsam was instructed to distribute the proceeds as follows: fifty percent should remain in his account and fifty percent should be sent to Claimant.

Claimant alleges that Langsam sold the shares as instructed, but without authorization used the proceeds to purchase 315,000 warrants of the same stock.

Respondent A.S. Goldman denies the allegations of wrongdoing, denies liability and asserts thirteen affirmative defenses which include a cross-claim for contribution and indemnification against Langsam. A.S. Goldman alleges that Claimant is a sophisticated and experienced investor who has been accumulating significant amounts of stocks and warrants for the preceding fourteen months. A.S. Goldman also alleges that it was not until the value of the warrants dropped to approximately thirty percent of their purchase price that Claimant indicated his dissatisfaction.

### **RELIEF REQUESTED**

Claimant requests an award of \$175,336.00, the proceeds from the sale of the 43,000 shares of the stock, plus interest at a rate of eight percent, costs and attorney's fees.

Respondent A.S. Goldman requests that the panel deny Claimant's claim and award A.S. Goldman as against Claimant costs and disbursements including attorney's fees, award A.S. Goldman as against Langsam the amounts, if any, awarded to Claimant which represents Langsam's proportionate share of fault and award A.S. Goldman such other and further relief as is just and proper.

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

The parties present at the hearing have agreed that the Award in this matter be executed in counterpart copies and have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

As stated previously, Langsam did not appear at the hearing. Based upon the notice sent by the NASD to Langsam this panel has ruled that notice was given to him and proceeded with the hearing in his absence pursuant to Sections 25 and 29 of the *Code of Arbitration Procedure* ("Code").

After the conclusion of the hearing on May 1, 1995, the panel determined that it wanted to hear from Scott Pumper and Steven A. Markowitz and issued Orders of Appearance for them to testify on May 19, 1995. They requested that they give telephonic testimony and the panel allowed their request.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

The order upon A.S. Goldman & Company for the purchase of 315,000 warrants of News Communications at .557; trade date December 20, 1993 for the account of Howard Chiten, is canceled as an unauthorized order made by Robert Langsam, an employee of A.S. Goldman & Company, there being no evidence that such order was authorized or that Howard Chiten ratified it after notice. A.S. Goldman & Company and/or Robert Langsam are to credit to said account of Howard Chiten the sum of \$175,455.00 (ONE HUNDRED SEVENTY FIVE THOUSAND FOUR HUNDRED FIFTY FIVE DOLLARS AND ZERO CENTS).

### **FORUM FEES**

Pursuant to Section 43(c) of the *Code*, the following Forum Fees are assessed jointly and severally against A.S. Goldman & Langsam.

Non-refundable Filing Fee: \$200.00

Non-refundable Filing Fee for Cross-Claim: \$500.00

Hearing Session Fees: \$2,250.00 (3 hearing sessions @ \$750.00 per session)

Total Fees: \$2,950.00

1. Claimant previously paid \$950.00 and is entitled to a refund.
2. Respondent A.S. Goldman previously paid \$1,250.00, Respondents A.S. Goldman and Langsam owe a balance of \$1,000.00 which shall be satisfied by reimbursing Claimant \$950.00 and by remitting the balance \$50.00 to the NASD.

Fees are payable to the National Association of Securities Dealers, Inc.


Award #94-01809

Page 4

**ARBITRATION PANEL**

Edward O. Proctor, Esq.	-	Public Chairperson
Jeanne O'Connell	-	Public Panelist
Richard A. Baum	-	Industry Panelist

Concurring Arbitrator's Signature

  
Edward O. Proctor, Esq.

Date of Decision: June 21, 1995

Award #94-01809

Page 4

**ARBITRATION PANEL**

Edward O. Proctor, Esq.

Jeanne O'Connell

Richard A. Baum

-

Public Chairperson

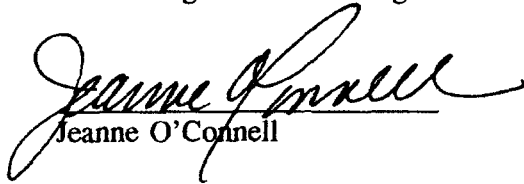
-

Public Panelist

-

Industry Panelist

Concurring Arbitrator's Signature

  
Jeanne O'Connell

Date of Decision:

June 21, 1995

Award #94-01809  
Page 4

**ARBITRATION PANEL**

Edward O. Proctor, Esq.	-	Public Chairperson
Jeanne O'Connell	-	Public Panelist
Richard A. Baum	-	Industry Panelist

Concurring Arbitrator's Signature

  
Richard A. Baum

Date of Decision:

June 21, 1995