

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Brian Faske

vs.

Award No.
94-02038

Name of Respondents

Beacon Securities, Inc.
Gus Elijah Goldman
Stephen William Schwartz
James Malcolm Bock

REPRESENTATION

For Claimant, Brian Faske ("Claimant"), Garret Rubin, Esq., from the firm of Dispenza & Rubin located in Glendale, New York.

For Respondents, Beacon Securities, Inc. ("BSI"), Leon B. Lipkin, Esq. from the firm of Loselle Greenwartz Kaplan & Blain, located in New York, New York.

Respondent, Stephen Schwartz, ("Schwartz"), represented himself at the hearing located in New York, New York.

For Respondent, Malcolm Bock ("Bock"), Bradford L. Jacobowitz, Esq. from the firm of Gusrae Kaplan & Bruno, located in New York, New York.

Respondent Gus Elijah Goldman ("Goldman") did not appear at the hearing. (See "Other Issues Considered & Decided").

CASE INFORMATION

Statement of Claim was filed on October 7, 1994.

Claimant's Submission Agreement was signed on October 30, 1995.

Statement of Answer was filed by Respondent, BSI on October 26, 1994.

Respondent, BSI's Submission Agreement was signed on October 21, 1994.

Statement of Answer was filed by Respondent Schwartz on November 9, 1994.

Respondent Schwartz's Submission Agreement was signed on November 1, 1994.

Statement of Answer and Motion to Dismiss filed by Respondent Bock was filed on October 25, 1994.

Amended Statement of Answer was filed by Respondent Bock on December 5, 1994.

Respondent Bock's Submission Agreement was signed on October 24, 1994.

Stipulation of Discontinuance file by Claimant and Bock on March 6, 1996.

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

HEARING INFORMATION

Hearing Date/Sessions: October 30, 1995 - 2 sessions

Hearing Location: NASD offices located at 33 Whitehall Street, New York, New York.

CASE SUMMARY

Claimant alleges that he authorized the purchase of 500 shares of LoJack at \$6.00 per share after a "cold call" from Respondent Goldman. Claimant also alleges that when he reviewed his statement, he realized that Goldman had purchased 1,000 shares without his authorization. Claimant further alleges that Goldman said that it was an internal error which would be corrected but was not corrected when Claimant received his next statement. Claimant states that when he spoke with Goldman again, Goldman offered that Claimant purchase these additional 500 unauthorized shares at \$10.00 per share. Claimant also states that he declined but agreed when Goldman reduced the price to \$6.00 and submitted funds for this purchase.

Claimant further alleges that Goldman without Claimant's authorization then purchased 3,000 shares of American Pleasure at \$3.00 per share and his complaints were unanswered. Claimant contends that this stock did not trade at the price Goldman purchased them.

Respondent BSI denies the allegations of wrongdoing and denies liability. Respondent maintains that Claimant consented to and purchased LoJack stock. Said Respondent also maintains that Claimant made a sixty-five percent return on LoJack within a two-month period. Respondent BSI further maintains that Claimant was aware of the sale of LoJack and the subsequent purchase of American Pleasure, Inc. as Claimant submitted a check in the amount of \$1,600 in order to cover the purchase.

Respondent BSI contends that Claimant's request for certain damages demonstrates a total lack of credibility because Claimant made \$10,000 on a \$6,000 investment and received \$1,600.

Respondent Bock denies knowledge of the allegations, denies liability and asserts ten affirmative defenses. Said Respondent asserts a counterclaim for costs including attorney's fees for having to defend this baseless claim and a cross-claim against Respondents, Goldman, BSI and Schwartz for indemnification and/or contribution.

Respondent Schwartz denies each and every allegation in the Statement of Claim and maintains he was not assigned to Claimant's account and had no responsibility to monitor Claimant's account. Respondent Schwartz asserts three affirmative defenses. Respondent Schwartz states that he became aware of the alleged wrongdoing after he received a phone call from Claimant which was followed by a March 30, 1994 letter from Claimant.

RELIEF REQUESTED

Claimant requests a total of \$71,020 which includes compensatory damages, NASD filing fees, punitive damages (\$205,000.00), legal fees (\$10,000.00) and consultation fees with brokerage advisor and 10b attorney (\$12,500.00).

All Respondents who appeared at the hearing request that the claim be dismissed. Respondents Bock and Schwartz request that the panel award them costs and attorneys fees, Boch's damages to be shown at the hearing on his counterclaim and such other and further relief as seems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may 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 previously stated Respondent Geldman did not appear at the hearing. Based upon the evidence and NASD documents concerning notice provided to Mr. Geldman and pursuant to Sections 25 and 29 of the NASD *Code of Arbitration Procedure* ("Code"), this Panel found the Respondent Geldman was notified of this proceeding and proceeded with the hearing in his absence.

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:

1. Respondents Beacon Securities, Inc. and Gus Elijah Geldman are jointly and severally liable to Claimant and shall pay Claimant SEVEN THOUSAND EIGHT HUNDRED DOLLARS AND ZERO CENTS (\$7,800.00) which included interest.
2. Claimant shall retain the securities in question.
3. Respondents Beacon Securities, Inc. and Gus Elijah Geldman shall reimburse Claimant \$520.00 in forum fees as indicated in the Forum Fees section of this decision.
4. All other claims for relief are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code, the following Forum Fees are assessed and shall be borne by Beacon Securities, Inc. and Gus Elijah Geldman.

Non-refundable Filing Fee: \$120.00

Hearing Session Fees: \$800.00 (2 hearing sessions @ \$400.00 per session)


Total Fees: \$920.00

- 520⁰⁰
1. Claimant previously paid ~~\$300.00~~ and shall be reimbursed by Respondents Beacon Securities, Inc. and Gus Elijah Goldman. Said Respondents shall remit the balance ~~\$400.00~~ to the NASD.
- Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Michael G. Shannon, Esq.	-	Public Chairperson
Stanley H. Labinger	-	Public Panelist
Herbert Z. Geiger, Esq.	-	Industry Panelist

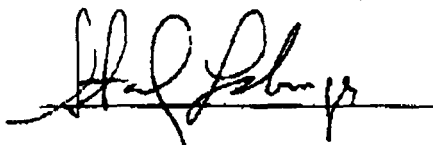
Concurring Arbitrator's Signature


Stanley H. Labinger

NASD's Date of Decision: February 14, 1996

AFFIRMATION

I, ~~STANLEY~~ ^{LABINGER}, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.



1. Claimant previously paid \$520.00 and shall be reimbursed by Respondents Beacon Securities, Inc. and Gus Elijah Goldman. Said Respondents shall remit the balance \$400.00 to the NASD.

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

ARBITRATION PANEL

Michael G. Shannon, Esq.	-	Public Chairperson
Stanley H. Labinger	-	Public Panelist
Herbert Z. Geiger, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature

Michael G. Shannon
Michael G. Shannon, Esq.

NASD's Date of Decision: February 14, 1996

AFFIRMATION

I, Michael G. Shannon, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

Michael G. Shannon

520⁰⁰

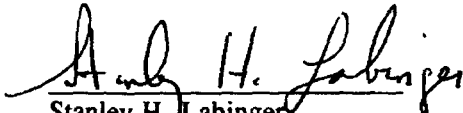
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Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Michael G. Shannon, Esq.	-	Public Chairperson
Stanley H. Labinger	-	Public Panelist
Herbert Z. Geiger, Esq.	-	Industry Panelist

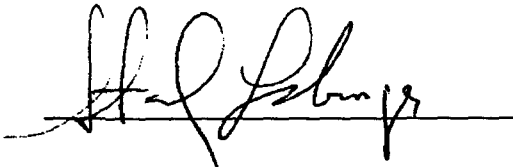
Concurring Arbitrator's Signature


Stanley H. Labinger

NASD's Date of Decision: _____

AFFIRMATION

I, ~~STANLEY~~ ^{LABINGER}, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.



1. Claimant previously paid \$500.00 and shall be reimbursed by Respondents Beacon Securities, Inc. and Gus Elijah Geldman. Said Respondents shall remit the balance \$400.00 to the NASD.

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

ARBITRATION PANEL

Michael G. Shannon, Esq.	-	Public Chairperson
Stanley H. Labinger	-	Public Panelist
Herbert Z. Geiger, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature

Michael G. Shannon
Michael G. Shannon, Esq.

NASD's Date of Decision: _____

AFFIRMATION

I, Michael G. Shannon, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

Michael G. Shannon