

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Albert H. Jacoby

95-00274

Name of Respondent

A.S. Goldmen & Co.
Stephen Kaplan

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 17, 1995, Claimant Albert H. Jacoby ("Claimant"), who appeared Pro Se, alleged that Respondents A.S. Goldmen & Co. ("A.S. Goldmen") and Stephen Kaplan ("Kaplan"), failed to follow his instructions to sell 1200 warrants of Country Star Restaurants ("CSR") at the market price, and that, despite numerous subsequent attempts at reiterating the same sell order to Respondents, the final sale was not effected until October 29, 1994, causing a loss to the Claimant. Claimant contended that from September 27, 1994 to October 29, 1994, Respondents handled the disputed sell order in an unprofessional manner, and that Claimant's attempts to communicate this fact to A.S. Goldmen's compliance officer and general counsel were met with similar lack of professional response. Claimant further contended that as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondents A.S. Goldmen & Co. and Stephen Kaplan, through their counsel, Robert J. Hausen, Esq. of Chadbourne & Parke, NY, NY, maintained that on December 15, 1993, Claimant authorized and ratified purchase of 500 shares at \$5.00 and 500 warrants at \$0.25 of CSR in his primary account. Respondents further maintained that on January 15, 1994, Claimant authorized and ratified purchase of 700 warrants of CSR at \$2.00 for his IRA account. Respondents contended that on October 5, 1994 and October 18, 1994, Claimant requested and Respondents effected the sale of 500 warrants at \$3.625, and 300 warrants at \$3.50, respectively. Respondents contended that subsequent to October 18, 1994, Claimant began exhibiting disturbing tendency to "transmogrify earlier discussions regarding whether or not to sell into purportedly unambiguous sell orders", and thus A.S. Goldmen's general counsel was notified of alleged claims. Respondents further contended that counsel contacted Claimant to determine conclusively what Claimant wanted to do regarding remaining position in CSR. Respondents maintained that on October 25, 1994, Claimant requested and Respondents effected the sale of 500 shares of CSR at \$3.44, and 400 warrants of the same at \$3.33. Respondents further maintained that at all times, Claimant was treated with full professionalism regarding both his access to broker Kaplan, and the timely execution of his trades. Respondents contended that Claimant suffered no loss, as all the above trades were in fact profitable. Respondents further contended that as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimant Albert H. Jacoby, requested \$1,800.00 in actual damages, plus \$200.00 in expenses and interest.

Respondents A.S. Goldmen & Co. and Stephen Kaplan, requested that the claims of the Claimant be dismissed in their entirety.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jonathan P. Tomes, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Albert H. Jacoby, on January 14, 1995, and by the Respondents A.S. Goldmen & Co. and Stephen Kaplan, on March 22, 1995.

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 Respondents A.S. Goldmen & Co. and Stephen Kaplan, are jointly and severally liable and shall pay to the Claimant, Albert H. Jacoby, \$1,800.00 in actual damages.
2. The Claimant's request for interest is denied.
3. The parties shall bear their respective costs.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Albert H. Jacoby, shall be retained by the NASD, Inc. Respondents A.S. Goldmen & Co. and Stephen Kaplan are jointly and severally liable and shall pay to the Claimant, Albert H. Jacoby, \$50.00 as reimbursement of the filing fee.

AFFIRMATION

STATE OF

ILLINOIS

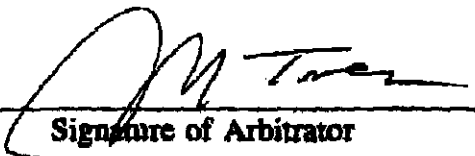
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SS:

COUNTY OF

CO-4

I, JONATHAN P. TONG, 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:

January 31, 1996