

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Kenneth W. Miller

NASD Arbitration

No. 95-00876

Name of Respondent(s)

A.S. Goldmen & Company

Robert Fox

REPRESENTATION

For Claimant: Steven Williams, Esq., San Diego, California

For Respondents: Phoebe A. Wilkinson, Esq., Chadbourne & Parke
LLP, New York, New York

CASE INFORMATION

Statement of Claim filed: February 15, 1995

Amendment to Statement of Claim filed: March 13, 1995

Amendment to Statement of Claim filed: April 26, 1995

Claimant's Submission Agreement signed: February 10, 1995

Joint Statement of Answer filed by Respondents: June 3, 1995

Respondents' Submission Agreement signed: May 11, 1995

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

November 29, 1995 (one session)

Hearing Date(s)/Session(s): December 6, 1995 (two sessions)
December 7, 1995 (one session)

Hearing Location: San Diego, California

CASE SUMMARY

Claimant alleged that he suffered damages because of Respondents' failure to execute the sale of 3400 Country Star Restaurant Inc. (Country Star) warrants on August 11, 1994.

Respondents denied any liability to Claimant and alleged that there was no order to sell Country Star warrants on August 11, 1994 and that there was no order to sell any Country Star warrants at any point in time that Claimant held the subject securities. Respondents further alleged that Claimant is attempting to use hindsight in order to reap the highest potential profit from his investment and alleged that all investments conducted by Respondents were executed according to decisions made, and instructions given, by Claimant.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$31,025.00 plus punitive damages in the amount of \$68,000.00.

Respondents requested dismissal of Claimant's claims and requested costs and expenses.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the National Association of Securities Dealers, Inc. (NASD).

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have

decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimant, including the claims for punitive damages, are dismissed.

2. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$500.00 hearing session deposit previously deposited by the Claimant. Forum fees are to be split between Claimant and Respondents and are calculated as follows:

One pre-hearing session @ \$300.00/session	=	\$ 300.00
Three hearing sessions @ \$500.00/session	=	<u>\$1,500.00</u>
Total fees assessed	=	\$1,800.00
 Claimant's share (50%)	=	\$ 900.00
Credit for hearing deposit	=	\$ 500.00
Balance due	=	\$ 400.00
 Respondents' share, jointly and severally (50%)	=	\$ 900.00
Balance due	=	\$ 900.00

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
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William R. Newsome, Esq.
Gerald J. Lonergan
Lewis C. Brown

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signatures

William R. Newsome

William R. Newsome, Esq.

Gerald J. Lonergan

Lewis C. Brown

Date served: 12/26/95

Date of Decision: _____

Concurring Arbitrators' Signatures

William R. Newsome, Esq.

Gerald J. Lonergan

Gerald J. Lonergan

Lewis C. Brown

Date served: 12/26/95

Date of Decision: 12/21/95

Concurring Arbitrators' Signatures

William R. Newsome, Esq.

Gerald J. Lonergan



Lewis C. Brown

Date served: 12/26/95

Date of Decision: _____