

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Agapito Santos Trust, Agapito Santos TTEE

95-00971

Name of Respondent

A.S. Goldmen & Co., Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 23, 1995, Claimant Agapito Santos Trust, Agapito Santos, TTEE ("Claimant"), who appeared Pro Se, alleged that Respondent A.S. Goldmen & Co., Inc. ("Respondent"), failed to execute a sell placed on September 15, 1994. Claimant further alleged that he informed Respondent that he was going on a three-week vacation and wanted it to sell the 1,000 Country Star Restaurant ("CSR") and 1,000 Country Star Restaurant Warrants ("CSRW") shares located in his accounts. Claimant further alleged that upon return from his vacation on October 6, 1994, and called the Respondent because the trades were not executed as had been requested but was unable to get the trades executed until October 26, 1994. Claimant contended that the Respondent negligently handled his sell order and that as a result of the above, he has suffered a loss for which the Respondent should be held liable.

Respondent A.S. Goldmen & Co., Inc., through its representative, Robert J. Hausen, Esq., of Chadbourne & Parke, located in New York, New York, maintained that the Claimant is simply upset that he was unable to maximize his profit in hindsight. Respondent further maintained that in September of 1994, the Claimant had called the Respondent and indicated a nervousness about the recent performance of CSR and CSRW. Respondent contended that several weeks later the Claimant contacted it again and began claiming that he had given a sell order back in September of 1994. Respondent further contended that it executed the October 26, 1994 sell order in a timely manner and that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant Agapito Santos Trust, Agapito Santos TTEE, requested \$3,000.00 in actual damages.

Respondent A.S. Goldmen & Co., Inc., requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Ron Pekoe, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Agapito Santos Trust, Agapito Santos TTEE, on March 24, 1995, and by the Respondent A.S. Goldmen & Co., Inc., on May 11, 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 Respondent A.S. Goldmen & Co., Inc., is liable and shall pay to the Claimant Agapito Santos Trust, Agapito Santos TTEE, \$3,000.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Agapito Santos Trust, Agapito Santos TTEE, shall be retained by the NASD, Inc. The Respondent A.S. Goldmen & Co., Inc., is liable and shall pay to the Claimant Agapito Santos Trust, Agapito Santos TTEE, \$125.00 and reimbursement of the filing fee.

AFFIRMATION

I, RON PEKOE, 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.



Ron Pekoe

DATE OF DECISION: September 28, 1995