

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Richard L. Berman

95-01406

Name of Respondents

A.S. Goldmen & Co., Inc.
Christopher John Albert Richardson

REPRESENTATION

Claimant Richard L. Berman ("Claimant") appeared at the hearing "Pro Se".

Respondents A.S. Goldmen & Co., Inc. ("Goldmen") and Christopher John Albert Richardson ("Richardson") were represented at the hearing by Robert H. Hansen, Esq. and Phoebe Wilkinson, Esq. of Chadbourne & Parke, L.L.P.

CASE INFORMATION

The Statement of Claim was filed on March 15, 1995.
Claimant's Submission Agreement was signed on March 16, 1995.

The Statement of Answer was filed by Respondents Goldmen and Richardson (collectively referred to as "Respondents") on May 30, 1995.
Respondents' Submission Agreements were signed on May 11, 1995.

HEARING INFORMATION

Hearing Date/Sessions: Friday, December 1, 1995 - two sessions.
Hearing Location: NASD Executive Office, Washington, D.C.

CASE SUMMARY

Claimant alleged that he purchased through Respondents 500 shares and 50 warrants of an initial public offering of Nickelodeon Theaters, and that he sent a check for full payment by Federal Express which was delivered to Respondents on February 14, 1995. Attached to the check was a letter with an order to sell the shares and forward the warrants to him. Claimant further alleged that Respondents failed to properly implement the sale order, which caused him to lose a profit of \$1,000.00. Claimant further alleged that Respondents retaliated by canceling Claimant's purchase order, improperly placed Claimant's initials on a Federal Express airbill, improperly prepared a new account agreement and failed to deal with him in good faith.

Claimant further alleged that Respondents have a pattern and practice of taking similar action with regard to other investors, and points to a series of claims against Respondents. In addition, Claimant alleged that the activities of Respondents following receipt of his complaints and in the discovery process in the arbitration are improper and abusive. Claimant contends that an award of punitive damages is necessary to prevent similar conduct in the future.

Respondents maintained that Claimant in fact never paid for the securities purchased, as there was no check in the Federal Express envelope delivered on February 14, 1995. Respondents contend that Claimant was attempting to engage in free riding and that, in any event, they had no obligation to complete his purchase transaction since Claimant failed to sign a new account agreement. Respondents requested that the case be dismissed in its entirety.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$1,000.00, plus punitive damages in the amount of \$9,000.00, and his expenses in presenting his claim.

Respondents requested that the claim be dismissed in its entirety, and that they be awarded their costs and attorney's fees in defending the claim based upon their contention that the claim was asserted in bad faith. At the hearing, Respondents contended that the amount sought was \$2,000.00, based upon expenses incurred in attending the hearing in Washington, D.C.

OTHER ISSUES CONSIDERED & DECIDED

Claimant requested that a representative of Respondent Goldmen's, Stuart Winkler, be present to testify. Over objection of Claimant, Mr. Winkler was permitted to testify by telephone.

At the close of Claimant's case, Respondents moved to dismiss the claim. That motion was denied.

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. That all claims against Respondent Goldmen and Richardson are dismissed in their entirety. While there are credibility questions as to every witness, the evidence weighs most strongly against Claimant. Particularly, his own correspondence disputes his testimony. He stated that he suspected fraud on the part of Respondents when he received from them an inaccurate new account agreement and a Federal Express airbill with his initials written in, but his letter of February 12, 1995 suggests strongly that he was investigating Respondent Goldmen before receipt of those materials. In addition, he testified that he sent other correspondence between February 14 & February 25 to A.S. Goldmen, but his letter of February 25, 1995 makes no reference to previous correspondence and he was unable to produce any such letters. This is particularly notable in light of the fact that he appears to keep his correspondence on his computer and can generate additional copies at will. The February 25, 1995 letter further indicates that Claimant received on that date the confirmation for the cancellation of the trades at issue, although Claimant testified that it was received over a week earlier.
2. That Claimant's claim for punitive damages is denied in its entirety.
3. That the parties shall bear their respective costs including attorneys' fees except as specified below.

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FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 sessions X \$200 = \$400 minus hearing session deposit of \$200 = net \$200 due.

Forum fees shall be split equally between the Claimant and Respondents. Claimant is assessed forum fees in the amount of \$200, however, Claimant is entitled to offset this amount with his hearing session deposit of \$200 previously filed so that no more monies are due from Claimant. Respondents Goldmen and Richardson are jointly and severally assessed forum fees in the amount of \$200.

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

Date

12/14/95

Concurring Arbitrator's Signature

Jeffrey P. Bloom

Jeffrey P. Bloom, Esq.
Presiding, Public Arbitrator

Date Award Served by the NASD:

December 15, 1995