

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gary Glass

95-01518

Name of Respondents

A.S. Goldmen & Co., Inc.
Anthony DeLuca

REPRESENTATION

For Claimant Gary Glass appeared Robert Lewis, Esq., a sole practitioner located in New York, New York.

For Respondents A.S. Goldmen & Co., Inc. ("A.S. Goldmen") and Anthony DeLuca ("DeLuca") appeared Phoebe A. Wilkinson, Esq. of the law firm of Chadbourne & Parke, located in New York, New York.

CASE INFORMATION

Statement of Claim filed: March 23, 1995.

Claimant's Submission Agreement signed on: March 24, 1995.

Joint Statement of Answer filed by A.S. Goldmen and DeLuca on: June 7, 1995.

A.S. Goldmen's Submission Agreement signed on: May 11, 1995.

DeLuca's Submission Agreement signed on: May 12, 1995.

HEARING INFORMATION

Pre-Hearing Conference: December 19, 1995 - One Arbitrator

Hearing Date/Sessions: January 16, 1996 - Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc.

located in New York, New York.

CASE SUMMARY

Claimant alleged that, on February 13, 1995, he purchased 500 shares of Nickelodeon Theater Company ("Nickelodeon") at \$5.00 per share, 50 Nickelodeon warrants at \$.25 per warrant and 5,000 Nickelodeon warrants at \$2.31 per warrant. Claimant further alleged that he called DeLuca on February 20, 1995 and instructed him to sell all of his positions in Nickelodeon and that DeLuca accepted his order and told him that he would get a check for the sale of the proceeds in seven business days. Claimant maintained that, at the time he gave his sell order, the stock was selling at \$7.00 a share and the warrants at 2 3/8 per warrant.

Claimant alleged that he received his account statement for February 1995 and observed that he still owned his positions in Nickelodeon. Claimant further alleged that he called DeLuca on March 6, 1995 to complain. DeLuca allegedly told claimant that the statement was in error and that claimant would receive a corrected statement. Claimant also alleged that, on March 13, 1995, DeLuca told him that a check would be mailed to him that day. Claimant maintained that he did not receive a check and that neither DeLuca nor A.S. Goldmen's compliance director would return his calls.

Respondents maintained that DeLuca received a telephone call from claimant on the morning of February 28, 1995 and that claimant advised DeLuca that he wanted to sell his positions in Nickelodeon. Respondents maintained that when DeLuca tried to execute claimant's orders he noticed that the prices at which the securities were trading had dropped precipitously and that because of the volatility it was impossible for DeLuca to execute claimant's sell order.

Respondents maintained that DeLuca immediately telephoned claimant and notified him of the sudden volatility. Respondents maintained that claimant told DeLuca he didn't want to sell and he rescinded his instruction to sell. Respondents contended that claimant never told DeLuca that his account statement was erroneous and that DeLuca never told claimant that a check for the proceeds of the sale was in the mail.

Respondents maintained that claimant still owned the securities and that claimant has taken no action to mitigate his damages. Respondents further maintained that, with respect to claimant's request for \$3,000.00 for the 200 shares of Resource Mortgage, claimant has not asserted any allegations addressing these securities and that if claimant wishes to sell his position in this security he must first issue a sell instruction. Respondents also maintained that claimant's claim should be denied in its entirety because all investments conducted by DeLuca were executed according to the decisions made and the instructions given by claimant.

RELIEF REQUESTED

Claimant requested \$15,993.75 plus an additional \$3,000.00 for the 200 shares of Resource Mortgage he purchased through A.S. Goldmen on February 19, 1995 for a total claim of \$18,993.75 less any brokerage fees.

Respondents requested that the Statement of Claim be dismissed in its entirety and that A.S.

Goldmen be granted all costs and expenses in this action.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in 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 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. Respondent A.S. Goldmen be and hereby is liable and shall pay to Claimant the sum of \$1,647.00.
2. All claims against Respondent DeLuca be and hereby are dismissed in their entirety.
3. Each party shall bear their own costs, including attorneys' fees.
4. All other claims are hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$100.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

1 prehearing conference	=	\$ 300.00
2 hearing sessions x \$400.00	=	<u>\$ 800.00</u>
Total	=	\$1,100.00

1. Claimant be and hereby is liable for the sum of \$550.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$400.00 with the NASD. Therefore, Claimant is liable and shall pay \$150.00 to the NASD.
2. Respondent A.S. Goldmen be and hereby is liable and shall pay to the NASD the sum of \$550.00, representing one-half of the total amount of forum fees assessed.

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

ARBITRATORS' SIGNATURES

Diane Getzler, Esq.

Diane Getzler, Esq.
Chairperson-Public Arbitrator

Kenneth M. Felder
Public Arbitrator

Frank G. Piazza
Industry Arbitrator

Date of decision: March 11, 1996

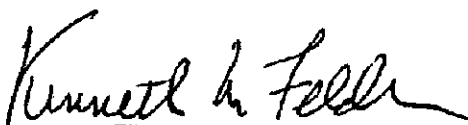
I, Diane Getzler, Esq., do hereby affirm that this is my decision in the above-referenced matter.

Diane Getzler, Esq.

Diane Getzler, Esq.

ARBITRATORS' SIGNATURES

Diane Getzler, Esq.
Chairperson-Public Arbitrator



Kenneth M. Felder
Public Arbitrator

Frank G. Piazza
Industry Arbitrator

Date of decision: March 11, 1996

I, **Kenneth M. Felder**, do hereby affirm that this is my decision in the above-referenced matter.

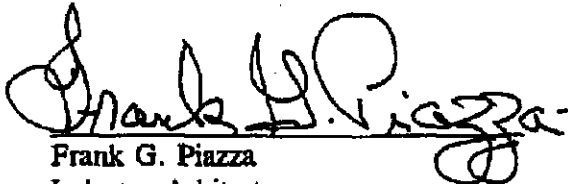


Kenneth M. Felder

ARBITRATORS' SIGNATURES

Diane Getzler, Esq.
Chairperson-Public Arbitrator

Kenneth M. Felder
Public Arbitrator



Frank G. Piazza
Industry Arbitrator

Date of decision: March 11, 1996

I, Frank G. Piazza, do hereby affirm that this is my decision in the above-referenced matter.



Frank G. Piazza