

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

Joseph C. & Judy Roetheli

95-01848

**Name of Respondents**

Ian R. Hosang  
Hugh Daniel Dunn  
A.S. Goldmen & Co., Inc.

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on April 18, 1995, Claimants Joseph C. & Judy Roetheli, who appeared Pro Se, alleged that Respondents Ian R. Hosang ("Hosang"), Hugh Daniel Dunn ("Dunn"), and A.S. Goldmen & Co., Inc. ("ASG"), misled them with poor investment advice. Claimants further alleged that Hosang contacted them and gave a "very strong sales pitch" to purchase stock in Starter Corp. which they followed to their detriment. Claimants contended that Dunn became the account executive after a few months and convinced them to purchase what they believed to be shares in Sports Heroes but what were actually warrants, again to their detriment. Claimants further contended that ASG should have wisely advised their clients and that as a result of the above, they have suffered damages for which the Respondents should be held liable.

Respondent A.S. Goldmen & Co., Inc., through its representative, Robert J. Hausen, of Chadbourne & Parke, located in New York, NY, maintained that Claimants merely complained because they are displeased with their modest investment. ASG further maintained that it is not uncommon to have disgruntled investors later charge their brokers for wrongful acts. ASG contended that the Claimants' instructions were followed with respect to the investments purchased and have failed to mitigate their damages. ASG further contended that the Claimants specifically sought "significant upside potential and commensurate downside risk," and that as a result of the above, it should not be held liable.

Respondent Hugh Daniel Dunn, who appeared Pro Se, maintained that Claimants fully authorized the security transactions within their account. Dunn further maintained that the Claimants decided to open an account with ASG after he sent him information about himself and ASG. Dunn contended that he opened the account and when doing so the Claimants refused to disclose information pertaining to suitability because Joseph C. Roetheli considered it to be confidential. Dunn further contended that he left the ASG prior to Hosang and should not be held liable for and transactions after his departure, and that as a result of the above, he should not be held liable.

Respondent Ian R. Hosang, failed to file an Answer to the Statement of Claim.

#### **RELIEF REQUESTED**

Claimants Joseph C. & Judy Roetheli, requested \$2,487.50 in actual damages, plus costs.

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

Respondent Hugh Daniel Dunn, requested that the claims of the Claimants be dismissed.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent Ian R. Hosang, was served by regular mail and given an opportunity to respond, which he failed to do. In addition, an overdue answer notice was sent to the Respondent by certified mail a signature card was not returned.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent Ian R. Hosang, has notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore, bound by the arbitrator's ruling and determination.

#### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Murray S. Levin, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Joseph C. & Judy Roetheli, on April 11, 1995, and by the Respondent A.S. Goldmen & Co., Inc., on June 22, 1995, but was not signed by Respondents Hugh Daniel Dunn, and Ian R. Hosang, as required by Sections 8 and 10 of the NASD Code of Arbitration Procedure.

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 claims of the Claimants Joseph C. & Judy Roetheli, against Respondents A.S. Goldmen & Co., Inc., Ian R. Hosang, and Hugh Daniel Dunn, are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. The Respondents A.S. Goldmen & Co., Inc., Ian R. Hosang, and Hugh Daniel Dunn, are jointly and severally liable and shall pay to the Claimants \$25.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, MURRAY S. LEVIN, ESQ., 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.

A handwritten signature in cursive script, appearing to read "M. S. Levin", is written over a horizontal line.

Murray S. Levin, Esq.

DATE OF DECISION: September 29, 1995