

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

James F. Murphy

NASD Case No.
95-01982

Name of Respondents

A.S. Goldmen & Company, Inc.
Christopher D. Panza
Robert F. Fox
Terrence J. Murphy
Stuart E. Winkler
Foster Gibbons

REPRESENTATION

Claimant James F. Murphy, Sr. appeared pro se.

For Respondents, A. S. Goldmen & Co. ("Goldmen"), Robert Fox ("Fox"), Christopher Panza ("Panza"), Foster Gibbons ("Gibbons") and Stewart Winkler ("Winkler"), appeared Phoebe A. Wilkinson, Esq. of the firm Chadbourne & Parke, located in New York, New York.

Respondent Terrence J. Murphy ("Murphy") did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed:	April 25, 1995.
Claimant's Submission Agreement signed on:	April 21, 1995.
Respondents Goldmen, Fox, Gibbons, Panza and Winkler's Statement of Answer filed on:	August 31, 1995.
Respondents' Goldmen, Fox, Gibbons, Panza and Winkler's Amended Answer and Counterclaim filed on:	September 6, 1996
Respondent Murphy's Statement of Answer filed on:	September 20, 1995.
Respondent Goldmen's Submission Agreement signed on:	August 24, 1995.
Respondent Panza's Submission Agreement signed on:	August 24, 1995.
Respondent Fox's Submission Agreement signed on:	August 24, 1995.
Respondent Winkler's Submission Agreement signed on:	August 24, 1995.

Respondent Gibbons' Motion to Dismiss filed on: September 6, 1995.

Respondent Gibbons did not execute a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

Respondent Murphy did not execute a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Dates/Sessions:	October 16, 1996	-	2 Sessions
	October 17, 1996	-	1 Session

The hearings were held at the offices of the NASD in Boston, Massachusetts.

CASE SUMMARY

Claimant alleged that unauthorized trading took place in an account he maintained at Goldmen and further alleged that his account representatives failed to follow his instructions to sell securities in his account. Claimant alleged that he was solicited by respondents Murphy, Panza and Fox, account representatives with Goldmen, and that he opened an account at Goldmen in the fall of 1994. Claimant alleged that he advised all three individual respondents that he could not invest in the securities market because he was investing in a construction project in Wisconsin and that all his money would be tied up in that project until February 1995. Claimant alleged that respondent Murphy convinced him that buying an Initial Public Offering ("IPO") in Sports Authority would yield a quick turn around and profit before February. Claimant alleged that both Fox and Murphy represented to him that IPO's were their specialty. Claimant alleged that Murphy never purchased Sports Authority for his account. Claimant asserted that Fox talked him into buying Innovative Technology ("Innovative") instead and maintained that Fox told him that he knew of an announcement being made about Innovative that the public did not know about. Claimant alleged that he agreed to purchase 3000 shares of Innovative. Claimant alleged that he subsequently learned that Innovative had increased in value over 30% in the week immediately preceding his purchase. Claimant alleged that when he questioned Fox about this, he was told that the increase represented a run-up in anticipation of the announcement which would definitely move the stock even higher.

Claimant alleged that Fox called him on January 15, 1995 and suggested that claimant sell his shares of Office Max and invest in more Innovative and alleged that Fox told him the announcement would be made at any time. Claimant alleged that he purchased an additional 1400 shares of Innovative. Claimant alleged that on January 24, 1995, he received a trade confirmation for his account showing a purchase of 5700 Innovative warrants on January 18 and a sale of 2200 shares on January 20, 1995. Claimant alleged that he had not authorized either of these transactions. Claimant alleged that Fox subsequently apologized for the transactions and advised claimant that he would correct claimant's account. Claimant also alleged that Fox asked him to wait until January 27 to have the account corrected because the announcement about Innovative was due to be made by then.

Claimant alleged that he called Fox numerous times from January 27, 1995 through February 1995 to discuss the correction of his account. Claimant alleged that he advised Fox on February 1 and February 7 to sell Innovative. Claimant alleged that when he finally spoke to Fox and informed him that he was supposed to have had the proceeds of the sale of Innovative by February 15, Fox claimed that claimant had never advised him to sell. Claimant alleged that they disagreed on what discussions had been had and what instructions had been given to Fox regarding transactions in his account. Claimant alleged that Fox did advise him that he would correct claimant's account and send him the proceeds from his account the next day.

Claimant alleged that he reported his dealings with Fox to Goldman's Compliance Department and was put in touch with respondent Gibbons. Claimant alleged that Gibbons advised him that he would look into the matter and call him back. Claimant alleged that when he did not hear back from Gibbons he called respondent Winkler, who, he had been advised, was Gibbons' superior. Claimant alleged that he never heard from Winkler. Claimant asserted that respondents knew when he opened his account that he would need the proceeds by February 1995. Claimant alleged that, if Fox had complied with his orders to sell 4,400 shares of Innovative at 7 7/8, claimant would have made \$34,650.00.

Respondents maintained that claimant never spoke with Panza as claimant alleged. Respondents maintained that Fox and Panza managed accounts as a team and that it was common for both of their names to appear on monthly account statements that were managed under their partnership. Respondents maintained that respondent Murphy solicited claimant and that claimant opened his account with a 400 share purchase of Office Max. Respondents alleged claimant subsequently purchased 3000 shares of Innovative. Respondents alleged that, on or about January 6, 1995, claimant authorized the sale of the 400 shares of Office Max and authorized Fox to use the proceeds to purchase 1400 additional shares of Innovative.

Respondents alleged that claimant had expressed an interest in Innovative's warrants. Respondents asserted that claimant told Fox that he would be needing money around mid February 1995 and asserted that claimant decided to sell one half (2000) of his shares of Innovative and use the proceeds to purchase 5100 Innovative warrants. Respondents alleged that since claimant had indicated he would be needing funds in mid February, Fox told claimant to let him know when claimant wanted to sell.

Respondent Fox denied that he ever received any message from claimant and asserted that he never apologized to claimant. Respondents further alleged that, since there was no unauthorized trading in claimant's account, no apology was warranted. Respondent Fox also denied that he ever told claimant that he would correct claimant's account back to 4400 shares of Innovative.

Respondents asserted that Fox never heard from claimant until on or about February 28, 1995 when prices for the Innovative stock and warrants decreased substantially. Respondents alleged that claimant called respondent Fox and indicated that he assumed that since claimant had advised Fox he would need money by mid February that he therefore expected Fox would have sold his positions in Innovative. Respondents alleged that Fox advised claimant that he was not permitted to sell securities in a customer's account absent a valid sell order and that claimant's statements concerning his need for money did not constitute a valid sell order. Respondents alleged that Fox then advised claimant that he could sell the stocks immediately, request expedited settlement and have the funds sent by next day delivery. Respondents alleged that claimant demanded to have the securities sold at the prices at which they were trading around mid February.

Respondents denied that Fox ever represented that he had information concerning Innovative of which the public was unaware. Respondents alleged that, on three separate occasions, Goldmen offered to sell claimant's positions in order to mitigate any damages. Respondents claimed that, although shares of Innovative had been trading higher than the price at which claimant had allegedly given sell instructions, claimant refused to liquidate his holdings. Respondents alleged that claimant's refusal to accept profit and eliminate damage constituted ratification of all activity in claimant's account.

Respondents alleged that after there was a three for one stock split of the Innovative stock and warrants, claimant liquidated the stock and warrants for an aggregate sum of \$41,400. Respondents alleged that counsel for respondents advised claimant not to withdraw the proceeds of the account prior to the determination of ownership of the securities by this arbitration. Respondents claimed that claimant withdrew all proceeds from the sale of both the stock and warrants realizing profits of \$41,400 which respondents alleged was a profit of almost 20% when compared to the compensatory damages of \$34,650 claimed by claimant.

Respondents alleged that the Statement of Claim should be dismissed in its entirety because it fails to state a cause of action upon which relief could be granted. Respondents also maintained that claimant's claims are barred by the doctrines of waiver, ratification and estoppel; that claimant has refused to mitigate any alleged damages, cannot provide any basis for the calculation of damages and has established no basis for the award of punitive damages. Respondents also alleged that claimant authorized all transactions in his account, is a sophisticated investor who assumed the risk of investing in the securities market, and that any alleged losses were caused by claimant's own conduct. Respondents maintained that all risk concerning claimant's investment were disclosed to claimant, that any losses suffered by claimant were the result of market conditions and/or fluctuations, that respondents acted professionally and in good faith, that claimant acted in bad faith and that claimant's claims are barred by the doctrine of unclean hands.

Respondents counterclaimed against claimant to recover attorney's fees for claimant's frivolous conduct and alleged that the proceeds claimant withdrew from his account at Goldmen were in excess of his claim. Respondents alleged that claimant therefore suffered no compensatory damages.

Respondent Murphy alleged that claimant had failed to state facts sufficient to form a claim against him and that claimant suffered no damages.

RELIEF REQUESTED

Claimant requested damages of \$34,650.00 representing the proceeds that a sale of Innovative would have produced; all costs and fees associated with bringing this arbitration and punitive damages of \$103,950.00.

Respondents requested that the Statement of Claim be dismissed in its entirety and further requested all costs, expenses and attorney's fees and any other relief deemed appropriate.

Respondent Murphy requested that he be dismissed from the arbitration and further requested all costs incurred.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel dismissed the Statement of Claim with respect to respondents Panza, Winkler, Murphy and Gibbons.

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. Claimant's claims are denied in their entirety.
2. Respondent Goldman's claims are denied in their entirety.
3. Respondent Fox's claims are denied in their entirety.

FORUM FEES

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

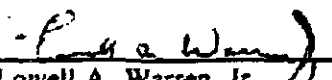
3 Sessions x \$750.00	=	\$2250.00
minus claimant's \$750.00 deposit	=	- 750.00
		\$1500.00

Respondent Goldman be and hereby is liable for the sum of \$2250.00 representing the entire amount of the forum fees assessed. Therefore, \$750.00 is owed by respondent Goldman to claimant and \$1500.00 is owed to NASD Regulation.

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

Concurring Arbitrators' Signatures

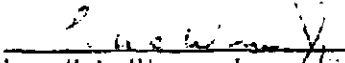
Joseph Auerbach, Esq.



Lowell A. Warren, Jr.

William George Hayward, Jr., Esq.

I, Lowell A. Warren, Jr., do hereby certify that this is my decision in the above-referenced matter.



Lowell A. Warren, Jr.

NASD Date of Decision: November 26, 1996

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Concurring Arbitrators' Signatures


Joseph Auerbach, Esq.

Lowell A. Warren, Jr.

William George Hayward, Jr., Esq.

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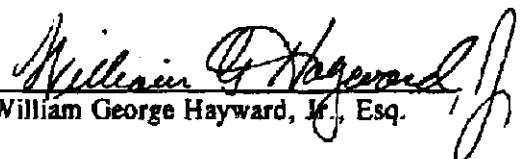
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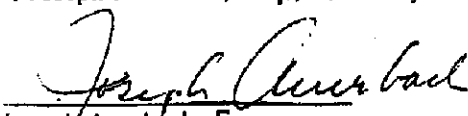
Joseph Auerbach, Esq.

Lowell A. Warren, Jr.



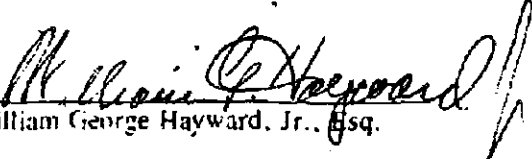
William George Hayward, Jr., Esq.

I, Joseph Auerbach, Esq., do hereby certify that this is my decision in the above-referenced matter.


Joseph Auerbach, Esq.

NASD Date of Decision: November 26, 1996

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William George Hayward, Jr., Esq.

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