

**NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION**

In the Matter of the Arbitration Between

**Name of Claimant**

Gordon Frizzell

9503076

**Name of Respondents**

\*A.S. Goldmen & Co., Inc.  
Chris Panza  
Robert Fox

**REPRESENTATION**

Claimant Gordon Frizzell ("Claimant") was represented by William W. Willard, Esq., Bernstein, Shur, Sawyer & Nelson, Portland, ME.

Respondents A.S. Goldmen & Co., Inc. ("A.S. Goldmen"), Chris Panza ("Panza") and Robert Fox ("Fox") were represented by Carole R. Bernstein, Esq., Norwalk, CT.

**CASE INFORMATION**

The Statement of Claim was received June 26, 1995.

Claimant's Uniform Submission Agreement was signed June 20, 1995.

The Joint Statement of Answer of AS. Goldmen, Panza and Fox (collectively "Respondents") was received August 30, 1995.

A.S. Goldmen's Uniform Submission Agreement was signed September 14, 1995.

Panza's Uniform Submission Agreement was signed September 14, 1995.

Fox's Uniform Submission Agreement was signed September 14, 1995.

**HEARING INFORMATION**

Hearing Dates/Sessions: July 22, 1996/two sessions

Hearing Location: NASD Regulation District Office  
Boston, MA

Hearing Dates/Sessions: October 22, 1996/two sessions

Hearing Location: Boston Marriott  
Boston, MA

### CASE SUMMARY

Claimant alleged, among other things, that Respondents failed to execute transactions as directed by Claimant. Claimant alleged that he opened an account with A.S. **Goldmen** in 1991. Claimant further alleged that in August 1994 his account had 5,000 shares of Country Star common stock, 20,000 shares of Country Star warrants and 5,000 shares of Innodata. Claimant alleged that on August 12, 1994, Claimant called A.S. **Goldmen** and instructed Panza to sell the 5,000 shares of Country Star common stock, the 20,000 shares of Country Star warrants and the 5,000 shares of Innodata. Claimant alleged that when he did not receive the check from these transactions, he called Respondents after approximately two weeks and was informed that Panza had failed to order the sale. Claimant alleged that he again brdered Panza to liquidate these securities. Claimant alleged that he repeatedly called and was assured by Panza and Fox that he would get his money. Claimant alleged that on January 9, 1995 he wrote a letter to Respondents complaining about the inability to have Claimant's securities sold. Claimant alleged that on January 13, 1995 the shares and warrants in Country Star were sold and eventually the Innodata were sold by another source. Claimant alleged that the refusal of Respondents to execute the sale of these securities as directed by Claimant resulted in lost profit of \$234,365.00.

Respondents denied all allegations of wrong doing asserted by the Claimant. Respondents maintained that Claimant received confirmations and account statements regarding sales and purchases in a timely fashion. Respondents maintained that Claimant had an account with AS. **Goldmen** for approximately three years prior to the alleged incident at issue and that all transactions were executed pursuant to Claimant's instructions. Respondents further maintained that Claimant did not timely notify them of his complaint concerning the alleged failure to execute which constitutes ratification of Respondents' actions. Furthermore, Respondents maintained that three days after Claimant allegedly ordered his 20,000 warrants of Country Star sold, Claimant ordered the purchase of 2,000 additional warrants of Country Star on August 15, 1994. Respondents maintained that the claims are barred by the applicable statute of limitations and the doctrine of laches. Respondents contended that the Claimant's claims fail to meet the requirements of the Statute of Frauds of the Uniform Commercial Code as he did not provide written objections within ten days of his receipt of the trade confirmations. Respondents further maintained that as a result of the above, they should not be held liable.

### RELIEF REQUESTED

Claimant requested relief in the amount of \$216,737.50.

Respondents requested that the Statement of Claim be dismissed and that the costs and expenses of this arbitration, including reasonable attorney's fees, be assessed to Claimant.

### 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.

At the beginning of the hearing, on July 22, 1996, the parties were informed that the panel was incorrectly composed pursuant to Rule 10308(b), in that there were two industry arbitrators and only one public arbitrator. The parties were offered the opportunity to adjourn until the matter could be properly paneled, but the parties agreed, on the record, to proceed with a majority industrypanel.

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**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. Respondents A.S. **Goldmen** and Chris **Panza** are jointly and severally liable to and shall pay to Claimant the sum of **\$65,000.00** plus twelve percent (12%) simple interest from the date of this Award until paid.
2. Each party shall pay its own costs and expenses.
3. Any relief not specifically addressed herein is denied.

**FORUM FEES**

Pursuant to Rule 10332(c) (formerly Section 43) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 Sessions x \$750.00 = **\$3,000.00**

Forum Fees are assessed to A.S. **Goldmen, Inc.** Therefore, A.S. **Goldmen** is liable to and shall reimburse Claimant for the \$750.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due to the NASD Regulation of **\$2,250.00**.

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

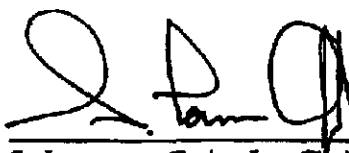
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DATE

11/1/96

CONCURRING ARBITRATORS' SIGNATURES



S. Lawrence Gwin, Jr., Chairperson  
Public Arbitrator

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Irwin M. Chase  
Industry Arbitrator

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Linda A. Gelfand  
Industry Arbitrator

Date Decision Served by NASD Regulation: November 18, 1996

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DATE

CONCURRING ARBITRATORS' SIGNATURES

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S. Lawrence Gwin, Jr., Chairperson  
Public Arbitrator

11/4/96

Irwin M. Chase  
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Irwin M. Chase  
Industry Arbitrator

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Linda A. Gelfand  
Industry Arbitrator

Date Decision Served by NASD Regulation: November 8, 1996

DATE

CONCURRING ARBITRATORS' SIGNATURES

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S. Lawrence Gwin, Jr., Chairperson  
Public Arbitrator

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Irwin M. Chase  
Industry Arbitrator

10/04/96

L. A. Gelfand  
Linda A. Gelfand  
Industry Arbitrator

Date Decision Served by NASD Regulation: November 8, 1996