

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of Arbitration Between

Name of Claimant

Eric M Kutner, Esq.

95-04053

Name of Respondent

A.S. Goldmen & Co., Inc.

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**REPRESENTATION**

Claimant appeared pro se.

For Respondent: Carole R. Bernstein, Esq., sole practioner, Norwalk, CT

**CASE INFORMATION**

Statement of Claim filed: August 22, 1995.

Claimant's Submission Agreement signed on: August 17, 1995.

Statement of Answer filed: October 16, 1995.

Respondent's Submission Agreement signed on: October 26, 1995.

**HEARING INFORMATION**

Hearing dates/sessions: March 4, 1996 (1 Session)

The hearing was held at the offices of the National Association of Securities Dealer, Inc. located in New York, New York.

### **CASE SUMMARY**

Claimant alleged that prior to February 7, 1995 he was contacted by Neil Konigsberg ("Konigsberg"), then an account representative of Respondent A.S. Goldmen & Co., Inc. ("Goldmen"), regarding a stock offering of Nickelodeon Theater Company ("NICK"). Claimant further alleged he asked Konigsberg to send a copy of the NICK offering prospectus and that, although Konigsberg guaranteed he would receive one as soon as it became available, he never received a NICK offering prospectus. Claimant further alleged that based on Konigsberg's representations he purchased 500 shares of NICK at \$5.00 per share for a total of \$2,500.00.

Claimant alleged that on or about March 23, 1995 he received a letter from Konigsberg, then an account representative of The Boston Group ("Boston"), requesting that he transfer his account from Goldmen to Boston. Claimant further alleged that, based on his prior experiences with Konigsberg, he never considered transferring his account to Boston.

Claimant alleged that shortly thereafter he was contacted by Ed Sapienza ("Sapienza"), an account representative of Goldmen, who introduced himself as Claimant's new account representative at Goldmen. Claimant alleged that he wanted to sell all his holdings and cancel his Goldmen account; however, Sapienza convinced him to convert his common stock into warrants as a way to make up his losses. Claimant further alleged that following Sapienza's advice only served to compound his losses.

Respondent denied each and every allegation contained in Claimant Eric M. Kutner, Esq.'s ("Kutner") Statement of Claim. In addition, Respondent specifically maintained that the NICK offering prospectus was mailed to Kutner.

### **RELIEF REQUESTED**

Claimant requested reimbursement in the amount of \$1,730.21, representing his total losses, plus costs.

Respondent requested Claimant's claim be dismissed and that Respondent be awarded all costs and disbursements, including reasonable attorney's fees.

### **OTHER ISSUES CONSIDERED AND 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. All claims against Respondent, A.S. Goldmen & Co., Inc., are dismissed.
2. Claimant Eric M. Kutner, Esq. is liable and shall pay to Respondent, A.S. Goldmen & Co., Inc., \$500.00, representing Respondent's attorney's fees.

### **FORUM FEES**

Pursuant to Section 43(c) or 44(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Hearing Session Fees	(1 session x \$25.00)	= \$25.00
Total Forum Fees:		\$25.00

Claimant is assessed \$25.00, representing the total forum fees, less the \$25.00 previously paid, leaving \$0.00 due.

**ARBITRATORS' SIGNATURES**

Michael G. Shannon  
Michael G. Shannon, Esq.  
Public Arbitrator, Chairperson

Robert E. Tobin  
Public Arbitrator

Noah D. Sorkin, Esq.  
Industry Arbitrator

Date of decision: August 6, 1996

I, **Michael G. Shannon, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

Michael G. Shannon  
Michael G. Shannon, Esq.

I, **Robert E. Tobin**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

Robert E. Tobin  
Robert E. Tobin

I, **Noah D. Sorkin, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

Noah D. Sorkin, Esq.  
Noah D. Sorkin, Esq.