

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Charles F. Winter

96-00719

Name of Respondent(s)

A.S. Goldmen & Company, Inc.

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**REPRESENTATION**

For Claimant Charles F. Winter ("Winter"): Michael S. Winter, Esq. of the law office of Michael S. Winter, Milwaukee, WI.

For Respondent A.S. Goldmen & Co., Inc. ("A.S. Goldmen"): Carole R. Bernstein, Esq. of the law office of Carole R. Bernstein, Esq., Norwalk, CT.

**CASE INFORMATION**

Statement of Claim filed: February 16, 1996. Claimant's Submission Agreement signed on: November 24, 1995.

Statement of Answer filed by Respondent A.S. Goldmen on: April 15, 1996. Respondent A.S. Goldmen's Submission Agreement signed on: April 10, 1996 by Stuart Winkler on behalf of A.S. Goldmen.

**HEARING INFORMATION**

On November 21, 1996 a pre-hearing conference was held with an arbitrator via telephone conference call.

On February 10, 1997 in Ft. Lauderdale, Florida, a hearing lasting one session was conducted.

**CASE SUMMARY**

Claimant alleged that Respondent was liable for making an unauthorized purchase of Sports Media, Inc. warrants. Claimant alleged that A.S. Goldmen's account executive originally

telephoned him on an unsolicited basis to purchase Sport's Media, Inc. stock and Claimant did purchase said stock. Claimant maintained that he subsequently directed Respondent to sell said stock but Respondent failed to do so for several weeks. Claimant further maintained that, thereafter, Respondent's account executive tried to convince Claimant to purchase Sport's Media, Inc. warrants but Claimant did not authorize the purchase of same. Claimant alleged that notwithstanding his failure to authorize said purchase, Claimant received confirmations indicating that the warrants were purchased for his account and subsequently sold at a loss.

Respondent denied all allegations of wrongdoing and asserted affirmative defenses including failure to state a claim; waiver; estoppel; ratification; failure to mitigate damages; conformity with all applicable rules and regulations; statute of limitations; assumption of risk; any losses occurred as a result of market conditions or Claimant's own actions; and, Claimant failed to comply with the statute of frauds provision of the Uniform Commercial Code by failing to send written objections within ten days of receipt of the confirmations.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$5,750.00.

Respondent requested dismissal of the claim plus costs and attorney's fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent's counsel did not appear at the hearing on February 10, 1997 but telephoned in to the hearing and requested that the arbitrator receive into evidence a letter dated February 3, 1997 from Carole R. Bernstein, Esq. and the exhibits attached thereto. The letter advised that no representative for A.S. Goldmen would appear at the hearing and requested that the attached documents be submitted to the arbitrator for consideration as evidence. There being no objection from Claimant, the arbitrator accepted the documents into evidence as Respondent's composite exhibit number one.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is found liable and shall pay to Claimant the amount of \$3,125.00 plus interest at the rate of 9% per annum from May, 1995 to February 10, 1997 in the amount of \$455.00 for a total due to Claimant of \$3,580.00.
2. Respondent's request for costs and attorney's fees is denied.
3. Respondent is also found liable and shall pay to Claimant \$200.00 representing reimbursement of Claimant's hearing session deposit.

### FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrator has assessed forum fees in the amount of \$400.00 (one hearing session x \$200.00 plus one pre-hearing conference x \$200.00).


1. Respondent is hereby assessed \$400.00 for which the NASD shall retain the \$200.00 previously deposited by Claimant in partial satisfaction thereof leaving a balance due to the NASD of \$200.00.
2. The NASD shall retain the \$75.00 non-refundable filing fee previously paid by Claimant to the NASD.

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

Arbitrator's Signature

Name

Public/Industry



Public/Chairman

Leo H. Kerns, Esq.

Date of Decision: February 19, 1997