

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Gerald D. Dana

96-01210

Name of Respondents

A.S. Goldmen & Company, Inc.
Michael Taranto
Neil Ronga

REPRESENTATION

Claimant Gerald D. Dana ("Claimant") appeared *pro se*.

Respondent A.S. Goldmen & Co., Inc. ("ASG") was represented by Carole R. Bernstein, Esq., Westport, CT.

Respondent Michael Taranto ("Taranto") was represented by Michael Barry, Esq., Barry & Shea, Brooklyn, NY.

Respondent Neil Ronga ("Ronga") was represented by David Richan, Esq., Tenzer Greenblatt, New York, NY.

CASE INFORMATION

The Statement of Claim was filed March 18, 1996.

Claimant's Supplement to the Statement of Claim was filed September 5, 1996.

Claimant's Uniform Submission Agreement was signed March 12, 1996.

ASG's Statement of Answer and Crossclaims were filed May 23, 1996.

ASG's Uniform Submission Agreement was signed May 21, 1996.

Taranto's Statement of Answer was filed December 19, 1997.

Taranto did not submit an executed agreement to arbitrate.

Ronga's Statement of Answer was filed August 20, 1996.

Ronga did not submit an executed agreement to arbitrate.

HEARING INFORMATION

Prehearing Conference Date/Sessions: February 24, 1998/one session

Hearing Dates/Sessions: July 14, 1998/two sessions
July 15, 1998/two sessions

Hearing Location: NASD Regulation
Office of Dispute Resolution
New York, NY

CASE SUMMARY

Claimant alleged that Respondent Taranto, while employed by Respondent ASG (collectively "Respondents") executed an unauthorized transaction in his account while he was out of the country on June 9, 1995. Claimant further alleged that he contacted Respondents during the last week of May 1995 to direct them to sell 4,000 shares of Sports Media ("SPTS") at its current price of 6 1/2 because he was leaving on an extended business trip to Pakistan on June 3 and he did not want to hold SPTS while he was gone. Claimant contended that Respondents induced him to authorize the holding of the 4,000 shares of SPTS and buy an additional 1,000 because the price was going to go even higher in the next thirty days. Claimant asserted that he gave in to Respondents' recommendation that they be given the authority to sell the shares when Respondent Taranto felt it was the right time.

Claimant alleged that when he returned from his trip on June 27 he found that Respondents had sold SPTS at 5 1/4 on June 9 and had on the same day purchased 8,500 shares of Skyland Park Management ("SKYP") at 3 1/8. Claimant maintained that Respondents admitted that the purchase was unauthorized but that it was going to go up in a couple of weeks and Claimant would make a good profit. However, Claimant asserted that the price never went up and continued to decrease in value. When Claimant returned from another trip out of the country in August 1995, he alleged that when he tried to contact Respondents again, he learned that Taranto had left the firm and his new account executive was Neil Ronga.

Claimant alleged that Ronga stated that while Taranto's action was unauthorized the transaction could not be reversed but that if Claimant held SKYP he would make up his losses, which has never happened. In addition, Claimant alleged that Ronga induced him to purchase 3,000 shares of SPTS again, then at \$5, but the price continued to decline also. Claimant alleged that Ronga also encouraged him to purchase another 3,000 shares of SKYP at 1 11/16 to average down but that Ronga's reassurance that SKYP would "shortly" recover changed to in "about a year." Claimant maintained that SKYP consistently went down and Ronga vigorously insisted that Claimant hold it and not sell which Claimant did to his detriment.

Respondent ASG denied each and every allegation of wrong-doing contained in the Statement of Claim. ASG specifically denied that any purchases in Claimant's account were unauthorized. ASG raised the affirmative defenses of 1) a failure to state a cause of action upon which relief may be granted; 2) waiver and estoppel; 3) ratification; 4) a failure to mitigate; 5) ASG acted in conformity with all applicable rules and regulations and acted in good faith; 6) claims are barred by the applicable statute of limitations; 7) laches; 8) Claimant had full knowledge of all material facts including positions held and transactions made therein and is therefore estopped; 9) Claimant authorized all transactions; 10) Claimant is a sophisticated investor and assumed the risk of investing; 11) losses, if any, were caused by Claimant's own conduct;

12) Statute of Frauds; 13) any losses were result of market conditions and/or fluctuations normally associated with investments.

In its first Cross-claim, Respondent ASG alleged that if Claimant sustained any damages other than as a result of Claimant's own careless, negligent or intentional behavior, and if AS Goldmen is found liable to Claimant for any or all of such damages, then such damage was the proximate result of conduct by Respondent Taranto.

In its second Cross-claim, Respondent ASG alleged that if Claimant sustained any damages other than as a result of Claimant's own careless, negligent or intentional behavior, and if AS Goldmen is found liable to Claimant for any or all of such damages, then such damage was the proximate result of conduct by Respondent Ronga.

Respondent Taranto denied each and every allegation of wrong-doing asserted in the Statement of Claim. Taranto further maintained that all purchases in Claimant's account were authorized. Taranto raised the affirmative defenses of 1) a failure to state a cause of action upon which relief may be granted; 2) waiver and estoppel; 3) ratification; 4) a failure to mitigate; 5) Taranto acted in conformity with all applicable rules and regulations in good faith; 6) claims are barred by the applicable statute of limitations; 7) laches; 8) Claimant had full knowledge of all material facts including positions held and transactions made therein and is estopped from bring the claims; 9) Claimant authorized all transactions; 10) Claimant is a sophisticated investor and assumed the risk of investing; 11) losses, if any, were caused by Claimant's own conduct; 12) Statute of Frauds; 13) any losses were result of market conditions and/or fluctuations normally associated with investments.

Respondent Ronga denied any wrong-doing with respect to Claimant's account with ASG. Ronga maintained that the only claim of wrongdoing, an allegedly unauthorized purchase of SKYP in June 1995, occurred approximately three months prior to when Ronga assumed management of Claimant's account. Ronga further maintained that while Claimant states that he discovered the allegedly unauthorized transaction in late June or early July 1995, he did not write to Respondents regarding this transaction, and in fact continued to authorize transactions with Respondents, until October 1995. Ronga maintained that it appears Claimant waited to see how SKYP would perform before he began to complain of unauthorized transactions. Ronga raised the affirmative defenses of 1) failure to state a claim for which relief may be granted; 2) contributory negligence; 3) Claimant acted in reckless disregard of facts and failed to exercise due care and diligence; 4) estoppel; 5) Claimant authorized all transactions; 6) waiver and ratification; 7) laches; 8) Ronga acted in good faith and exercised due care and diligence; 9) New York law controls; 10) Statute of Frauds; 11) no fiduciary duty existed.

RELIEF REQUESTED

Claimant requested damages of \$22,932.00.

Respondent ASG requested that all claims be denied and that all costs and disbursements, including reasonable attorney's fees incurred, be assessed to Claimant and that any award to Claimant on his claims herein be as against Respondents Taranto and/or Ronga or the amounts representing Taranto and/or Ronga's proportionate share.

Respondent Taranto requested that all claims be denied and that all costs and disbursements, including reasonable attorney's fees incurred, be assessed to Claimant.

Respondent Ronga requested that Claimant's Statement of Claim be denied in its entirety.

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.

Respondents Taranto and Ronga did not file with the NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

The panel considered Respondent Ronga's Motion to Dismiss and Expunge and all Responses thereto and granted the Motion. Therefore, Ronga is dismissed from this action and the panel will order that all references to this arbitration be expunged from Ronga's records maintained by the NASD Central Registration Depository ("CRD").

The panel considered and accepted ASG's request to withdraw their cross-claims.

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. That the Statement of Claim is dismissed in its entirety; and
2. That Respondent A.S. Goldmen is liable to and shall reimburse Claimant for the \$400.00 hearing session deposit which Claimant previously submitted to the NASD Regulation; and
3. That each party shall bear its own costs and expenses, including attorneys' fees, with the exception of forum fees as specified below; and
4. That all references to this arbitration shall be expunged from the records of Neil M. Ronga maintained by CRD; and
5. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 Respondent A.S. Goldmen was assessed a member surcharge of \$200.00 which has been paid.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the following Forum Fees are assessed:

1 prehearing session (full panel) x \$400.00 =	\$ 400.00
4 hearing sessions x \$400.00 =	<u>\$1,600.00</u>
Total Forum Fees	\$2,000.00

Forum Fees are assessed to Respondent A.S. Goldmen & Co., Inc. Respondent A.S. Goldmen shall receive credit for the \$400.00 hearing session deposit which they were ordered to reimburse directly to Claimant as well as the \$600.00 hearing session deposit previously submitted to the NASD, leaving a net assessment due to the NASD Regulation from Respondent A.S. Goldmen & Co., Inc. of \$1,000.00.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

AFFIRMATION AND CONCURRING ARBITRATOR'S SIGNATURE

I, **JOSEPH H. LEVIE, ESQ.**, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

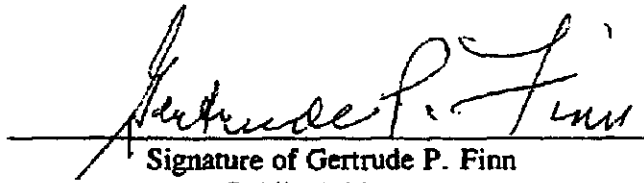


Signature of Joseph H. Levie, Chairman
Public Arbitrator

Date Decision Served by NASD Regulation: Aug. 13, 1998

AFFIRMATION AND CONCURRING ARBITRATOR'S SIGNATURE

I, GERTRUDE P. FINN, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

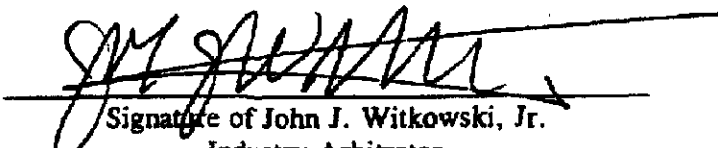


Signature of Gertrude P. Finn
Public Arbitrator

Date Decision Served by NASD Regulation: Aug. 13, 1998

AFFIRMATION AND CONCURRING ARBITRATOR'S SIGNATURE

I, JOHN J. WITKOWSKI, JR., ESQ., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.


Signature of John J. Witkowski, Jr.
Industry Arbitrator

Date Decision Served by NASD Regulation: Aug. 13, 1998