

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joseph Doria, Sr.

96-01212

Name of Respondents

A.S. Goldmen & Company, Inc.
James H. Barbour, III

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 18, 1996, Claimant Joseph Doria, Sr. ("Claimant"), who appeared Pro Se, alleged that Respondents A.S. Goldmen & Co. ("A.S. Goldmen"), and James H. Barbour, III, ("Barbour") made unauthorized trades on his account. Claimant further alleged that in October of 1995, Barbour, an investment consultant with A.S. Goldmen, called him about an opportunity to invest in the initial public offering of Winfield Capital Corporation ("Winfield"). Claimant contended that he agreed to invest, and that on October 26, 1995, Barbour purchased for his account 1,000 shares of Winfield at \$5.00 per share. Claimant further contended that six weeks later, Barbour called him again to inform him that the stock price had risen to \$8.00 per share, and that Barbour recommended that the stock be sold at this price. Claimant asserted that he agreed to sell at \$8.00 per share and that Barbour failed to execute this sell order. Claimant further asserted that Barbour subsequently said that he decided to wait for a better price and therefore had not sold the stock. Claimant alleged that Barbour, without his knowledge or consent, sold the Winfield stock at \$5.70 per share on January 3, 1996. Claimant further alleged that in January 1996, Barbour had purchased for his account 850 shares of Veritas Music Entertainment at \$6.56 per share, and that these shares were sold on January 12, 1996 at \$4.75 per share. Claimant contended that these transactions were made without his knowledge or authorization and that he did not give Barbour permission to act with discretionary power on his behalf. Claimant further contended that due to the wrongdoing of the Respondents, he has suffered damages for which the Respondents should be held liable.

Respondents A.S. Goldmen & Co. and James H. Barbour, III, through their representatives and outside counsel, Robert J. Hausen, Esq., of Chadbourne & Parke, LLP, and Foster J. Gibbons, Esq., New York, NY, maintained that all transactions in Claimant's account were conducted by his account representative at the direction of, and with the consent and expressed authority of the Claimant himself. Respondents further maintained that all decisions concerning each of the investments were made by Claimant, and that at no time was discretion exercised by A.S. Goldmen or any of its representatives in connection with Claimant's account. Respondents specifically denied that there were any trades conducted in Claimant's account without the express authorization first being given by Claimant. Respondent alleged that any

losses sustained by Claimant through investments made through A.S. Goldmen were the result of market fluctuations and forces wholly outside the control of Respondents. Respondents further alleged that they had committed no wrongdoing and requested that the claims of the Claimant be dismissed.

RELIEF REQUESTED

Claimant Joseph Doria, Sr. requested \$4,764.50 in actual damages.

Respondents A.S. Goldmen & Co., and James H. Barbour, III, requested that the claims of the Claimant be dismissed. Respondents also requested that they be awarded attorney's fees and costs incurred from the arbitration and defending themselves herein.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Marc L. Ripp, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Joseph Doria, Sr., on March 15, 1996, and by the Respondent A.S. Goldmen & Co., on May 6, 1996, and by the Respondent James H. Barbour, III, on May 3, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant Joseph Doria, Sr., against Respondents A.S. Goldmen & Co. and James H. Barbour, III, are dismissed in their entirety.
2. All other requests for relief are denied.
3. The parties shall bear their respective costs.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Joseph Doria, Sr., shall be retained by the NASD, Inc.

AFFIRMATION

I, **MARC L. RIPP, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

Marc L. Ripp, Esq.

DATE OF DECISION: July 22, 1996