

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Charles Cassaro

96-01213

Name of Respondents

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

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 18, 1996, Claimant Charles Cassaro ("Claimant"), who appeared Pro Se, alleged that Respondents A.S. Goldmen & Co. ("A.S. Goldmen") and James H. Barbour ("Barbour") made unauthorized trades in 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, through their representatives and counselors Robert J. Hausen, Esq. and Foster J. Gibbons, Esq., 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. Respondents 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 Charles Cassaro requested \$4,764.50 in actual damages.

Respondents A.S. Goldmen & Co. and James H. Barbour 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, Paul T. Green, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Charles Cassaro on March 15, 1996, and by the Respondent A.S. Goldmen & Co. on May 6, 1996, and by the Respondent James H. Barbour on April 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. Respondents A.S. Goldmen & Co. and James H. Barbour are jointly and severally liable and shall pay to Claimant Charles Cassaro \$838.50 in actual damages.
2. The parties shall bear their respective costs.
3. All other requests for relief are denied.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Charles Cassaro shall be retained by the NASD, Inc. Respondents A.S. Goldmen & Co. and James H. Barbour shall pay to Claimant Charles Cassaro \$125.00 as reimbursement of the filing fee.

AFFIRMATION

I, **PAUL T. GREEN**, 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.

Paul T. Green

DATE OF DECISION: August 30, 1996

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REPORT OF ARBITRATOR

Submissions and testimony suggest a failure by both parties to communicate properly but no malicious intent. The award amount will restore the balance of the Claimant's original capital of \$5,000.00.