

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Robert S. Peet

96-01463

Name of Respondents

A.S. Goldmen & Company, Inc.  
Ozgur Yilmaz  
Paul Colontino

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 3, 1996, Claimant Robert S. Peet ("Claimant"), who appeared Pro Se, alleged that from April 1994, he began receiving cold calls from Respondent Ozgur Yilmaz ("Yilmaz"). Claimant further alleged that Yilmaz cold called again in February, 1995, and promoted a new issue called Nickelodeon. Claimant also asserted that he commented to Yilmaz about being familiar with the cable television station Nickelodeon. Claimant asserted that Yilmaz led him to believe that the new issue and the cable television station were the same. Claimant further asserted that he refused to invest with Yilmaz since he was satisfied with his current broker. Claimant also asserted that on February 7, 1995, he received confirmations which reflected purchases for 500 shares of Nickelodeon Theater and 50 shares of Nick Warrants. Claimant contended that the purchases were unauthorized and he immediately called Respondent A.S. Goldmen & Co. Inc. ("A.S. Goldmen") to protest the unauthorized trades. Claimant further contended that during the conversation, Yilmaz fraudulently misrepresented that the value of the share had increased from \$5.00 to \$7.50. Claimant also contended that he instructed Yilmaz to sell the shares immediately and later forwarded a check to cover the transaction. Claimant alleged that approximately two months passed and still he had not received the proceeds of the sale. Claimant further alleged that A.S. Goldmen and Respondent Paul Colontino ("Colontino") failed to respond to his complaints. Claimant also alleged that Nickelodeon Theater Company stock was sold on June 7, 1995, and the proceeds reinvested in Skylands Park Management. Claimant asserted that he has suffered losses of \$2,049.51 as a direct result of respondents unauthorized trading, fraudulent misrepresentation, breach of fiduciary duty and failure to supervise.

Respondents Paul Colontino and A.S. Goldmen & Co. Inc. ("Respondents") through their representative, Carole R. Bernstein, Esq., a sole practitioner, located in Norwalk, Connecticut, maintained that Claimant authorized all of the transactions in his account. Respondents further maintained that Claimant also received confirmations and prospectuses for each purchase. Respondent also maintained that the trade for the shares and warrants were canceled since they were not paid for by the settlement date. Respondents contended that after Claimant paid for the Nickelodeon shares a representative from the customer service verified that he still desired the purchase and a confirmation was sent to him. Respondents further contended that Yilmaz did not converse with Claimant and inform him of an increase in the price of Nickelodeon shares. Respondents also contended that Claimant later accepted Yilmaz's advice to hold Nickelodeon stock and authorized the sale on June 7, 1995 at \$3.325 per share. Respondents asserted that they did not cause any of Claimant's losses and that Claimant fully understood the risks associated with buying securities.

Respondent Ozgur Yilmaz failed to file a Statement of Answer.

### **RELIEF REQUESTED**

Claimant Robert S. Peet requests a joint and several award against Respondents for compensatory damages in the amount of \$2,049.51, plus interest, costs and punitive damages.

Respondents A.S. Goldmen & Co. Inc. and Paul Colontino requested that the Statement of Claim be dismissed in its entirety and that costs be awarded.

Respondent Ozgur Yilmaz failed to file a Statement of Answer.

### **AWARD**

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Lorraine I. Remo Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 27, 1996, by Respondent Paul Colontino on July 15, 1996, by Respondent A.S. Goldmen & Co. Inc. on July 8, 1996 and not by Respondent Ozgur Yilmaz as is required by Sections 10301 & 10302 of the NASD Code of Arbitration Procedure.


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 Robert S. Peet against Respondents Ozgur Yilmaz, Paul Colontino and A.S. Goldmen & Co. Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.

3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.
4. All other relief requested are denied.

**AFFIRMATION**

I, **LORRAINE I. REMO, ESQ.**, do hereby swear or affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed his instrument, which is my award.

  
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Signature of Arbitrator

DATE OF DECISION:     October 30, 1996