

NASD STIPULATED AWARD

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimants

Robert J. Hiel  
Peter Shaughnessy

96-01712

Name of Respondents

A.S. Goldmen & Company, Inc.  
Anthony Marchiano  
Stuart Winkler  
Stephen Kaplan  
Salvatore Marchiano

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REPRESENTATION

For Claimants Robert J. Hiel and Peter Shaughnessy, ("Claimants"): Dan A. Druz, Esq., Attorney at Law, Manasquan, New Jersey.

For Respondents A.S. Goldmen & Company, Inc., Anthony Marchiano, Stuart Winkler, Stephen Kaplan, Salvatore Marchiano, ("Respondents"): Lewis S. Goldberg of the Law Offices of Carole R. Bernstein, Redding, Connecticut.

CASE INFORMATION

Statement of Claim filed: April 18, 1996

Claimant Peter Shaughnessy's Submission Agreement signed on: March 23, 1996

Claimant Robert J. Hiel's Submission Agreement signed on: March 26, 1996

Joint Statement of Answer filed by Respondents on: October 4, 1997

HEARING INFORMATION

Pre-Hearing Conference:

March 31, 1997 - one session, full panel

June 25, 1997 - one session, single Arbitrator

July 7, 1997 - two sessions, single Arbitrator

February 24, 1998 - one session, full panel

Hearing Date/Sessions:

July 24, 1997 - two sessions, full panel

Hearing Location:

New York, New York

CASE SUMMARY

Claimants are registered representatives formerly employed by A.S. Goldmen. Claimants resigned from A.S. Goldmen on or about October 12, 1994. Upon their resignation, A.S. Goldmen filed U-5's on behalf of each Claimant. Each Claimant's U-5 made reference to customer complaints, several of which were oral in nature, and an internal investigation regarding said complaints. Claimants' alleged that the oral complaints were improperly reported to the NASD in that they did not rise to the level of a "customer complaint" for purposes of U-5 reporting requirements. Claimants further alleged that A.S. Goldmen reported these oral "complaints" in order to harm Claimants' reputation and future earnings.

Respondents denied all wrongdoing and claimed that they had an obligation to report the complaints made by customers regarding the Claimants, even though the complaints were oral and not written. Further, the Respondents maintained that the Respondents had a good faith basis in believing that they were required to report the complaints and that they did not act with reckless or malice intent.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the undersigned that all claims against A.S. Goldmen & Co., Anthony Marchiano, Stewart Winkler, Stephen Kaplan, and Salvatore Marchiano are hereby withdrawn with prejudice and that the parties hereby consent to expungement of this arbitration from the Central Registration Depository Record ("CRD").

Dated: July 22, 1997

\_\_\_\_\_/s/\_\_\_\_\_  
Robert Hiel

Dated: July 22, 1997

\_\_\_\_\_/s/\_\_\_\_\_  
Peter Shaughnessy

Dated: July 21, 1997

\_\_\_\_\_/s/\_\_\_\_\_  
Stuart Winkler for  
A.S. Goldmen & Co.

Dated: July 21, 1997

\_\_\_\_\_/s/\_\_\_\_\_  
Anthony Marchiano

Dated: July 21, 1997

\_\_\_\_\_/s/\_\_\_\_\_  
Salvatore Marchiano

Dated: July 21, 1997

\_\_\_\_\_/s/\_\_\_\_\_  
Stuart Winkler

Dated: July 21, 1997

\_\_\_\_\_/s/\_\_\_\_\_  
Stephen Kaplan

### AWARD

After considering the pleadings and the Settlement Agreement of the parties (appended hereto as Exhibit A), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent A.S. Goldmen & Co., Inc. shall file an amended U-5 and this Stipulated Award with NASD which directs that the U-5 forms and other records maintained by CRD with respect shall be amended and expunged as follows:

- (i) amend the response to Question 15 on the U-5 Forms from "Yes" to "No";
- (ii) expunge from its files the Disclosure Reporting pages annexed to Exhibit A;
- (iii) expunge all references on any records maintained by the CRD to any internal investigation conducted by A.S. Goldmen with respect to the Claimants; and
- (iv) expunge all references made to by the following individuals:
  - (a) with respect to Claimant Robert Hiel: Albert Kane, Eli Barry, John Cawsey, June & Gary Finklea, Robert Gaiser, Eric Binau, Robert Harter, Alan Freeman, Mildered Porter, James Meharry, Frances Crane, and Jay Capelli;
  - (b) with respect to Peter Shaughnessy: Eli Barry, Floe Bowles, Donald McConnell, Mildered Porter, James Meharry, Frances Crane, and Jay Capelli.

2. That the parties agree that the U-5 Forms and all Disclosure Reporting Pages submitted by A.S. Goldmen upon the resignations of the Claimants were prepared and completed in good faith and without malice or reckless disregard for the truth of the statements contained therein and are not defamatory in any manner.

### OTHER COSTS

Pursuant to Rule 10333 of the Code of Arbitration Procedure, A.S. Goldmen & Co., Inc. member surcharge fee of \$500 remains due.

Pursuant to Rule 10319, on March 7, 1997, the Panel granted Claimants' postponement of the March 17 and 18, 1997 hearing dates. The postponement fee of \$1,000 remain due.

### FORUM FEES

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

(2 pre hearing conferences with a selected arbitrator x \$300) + (2 pre hearing conferences with the full panel x \$1,000) + (2 hearing sessions x \$1,000) = \$4,600

Forum Fees shall be assessed equally between Claimants and Respondents. Claimants are jointly and severally assessed forum fees of \$2,300, however, Claimants are entitled to offset this amount with their hearing session deposit of \$1,000 so that the amount due as forum fees from Claimants is \$1,300.

Respondents are jointly and severally assessed forum fees of \$2,300.

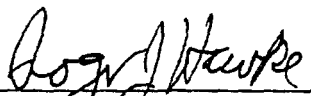
Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

DATE SIGNED

Concurring Arbitrators' Signatures

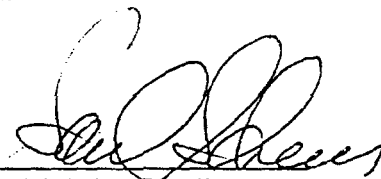
I, Roger J. Hawke, Esq., do hereby affirm,  
pursuant to article 7507 of the Civil Practice Law  
& Rules, that I am the individual described herein  
and who executed this instrument which is my Award.

7/30/98

  
Roger J. Hawke, Esq., Chairperson  
Public Arbitrator


I, Saul Scheier, do hereby affirm, pursuant to  
article 7507 of the Civil Practice Law & Rules,  
that I am the individual described herein and  
who executed this instrument which is my Award.

8/3/98

  
Saul Scheier, Panelist  
Public Arbitrator

I, Greg Plifka, do hereby affirm,  
pursuant to article 7507 of the Civil Practice Law  
& Rules, that I am the individual described herein  
and who executed this instrument which is my Award.

8/11/98

  
Greg Plifka, Panelist  
Industry Arbitrator

Date Stipulated Award Served by NASD Regulation:

August 14, 1998