

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Livingston Platt

96-02747

Name of Respondents

A.S. Goldmen & Company, Inc.
Edward S. Sapienza

REPRESENTATION

Claimant Livingston Platt ("Claimant") was represented by George R. Brown, Esq., Tucson, AZ.

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

Respondent Edward Sapienza ("Sapienza") did not appear.

CASE INFORMATION

Claimant's Statement of Claim was filed June 26, 1996.

Claimant's Uniform Submission Agreement was signed June 25, 1996.

Respondent Goldmen's Statement of Answer was filed August 27, 1996.

Respondent Goldmen's Statement of Amended Statement of Answer and Crossclaim was filed September 5, 1996.

Respondent Goldmen's Statement of Answer to Sapienza's Crossclaim was filed February 7, 1997.

Respondent Goldmen's Uniform Submission Agreement was signed December 11, 1996.

Respondent Sapienza's Statement of Answer and Crossclaim was filed January 2, 1997.

Respondent Sapienza's Uniform Submission Agreement was signed January 30, 1997.

HEARING INFORMATION

Prehearing Conference Date and Sessions: July 8, 1997/one session

Hearing Dates/Sessions: January 5, 1998/two sessions
January 6, 1998/two sessions

Hearing Location: Omni Hotel
Norfolk, VA

CASE SUMMARY

Claimant alleged that he began an investment relationship with Respondent Goldmen in 1995 and had approximately \$24,000.00 in his account. Claimant alleged that in November 1995, when his account executive Frank Schiavone left Goldmen, Claimant's account was assigned to Respondent Sapienza. Claimant further alleged that immediately Sapienza immediately began to pressure Claimant to purchase Skylands Park ("Skylands"), then trading at approximately 1 \ because Sapienza stated he was in a position to know that Skylands would at least double in value. However, Claimant alleged that Sapienza failed to inform him that Skylands had previously sought relief in the bankruptcy court. Based upon the misrepresentations and omissions of Sapienza, Claimant asserted that he placed all of his holdings in Skylands plus another \$15,000.00 on November 21, 1995. Claimant alleged that Skylands immediately began to drop in value. Claimant contended that he place approximately forty six telephone calls to Sapienza but Sapienza would spoke with Claimant seven times. Claimant also alleged that Sapienza repeatedly assured Claimant that Skylands would rebound and that Claimant would more than double his investment if he held firm. In addition, Claimant asserted that Sapienza failed to furnish the 10K report, a proxy statement and an annual report from Skylands as promised repeatedly.

Claimant alleged that on three occasions he requested to speak to another Goldmen broker as Sapienza was continuously "unavailable" and unresponsive, but Goldmen failed to ever make any other broker available so finally Claimant tried to call Sapienza's supervisor, but he also failed to return the calls. Finally, Claimant spoke to two other brokers at Goldmen and they informed him that Sapienza left the firm and that "mistakes were obviously made" because Goldmen had attempted to save Skylands from bankruptcy and just were unable to do so.

Claimant alleged that Respondent Sapienza and Goldmen's (collectively "Respondents") actions constituted negligence, fraud, fraudulent concealment, negligent and/or intentional misrepresentation, and conversion. Claimant also asserted that Skylands was unsuitable for him and that Respondents should be held responsible.

Respondent Goldmen denied each and every allegation of wrong-doing as asserted in the Statement of Claim. Goldmen raised the affirmative defenses of a failure to state a cause of action upon which relief can be granted; ratification, waiver and estoppel; a failure to mitigate; Claimant's account was always handled in a professional manner in accordance with all applicable rules and regulations; claims are barred by applicable statute of limitations; claims are barred by the doctrine of laches; Claimant authorized all transactions; Claimant is a sophisticated investor and assumed all risks; and any losses suffered by Claimant were the result of market conditions and/or fluctuations associated with investments in the securities markets.

Goldmen, in the Crossclaim for contribution and indemnification against Sapienza, alleged that if Claimant sustained any damage, loss or injury as alleged in the Statement of Claim, other than as a result of Claimant's own careless, negligent or intentional behavior, and if Goldmen is found liable to Claimant for any or all of such damage, loss or injury, then such damage, loss or injury was the proximate result of acts, omissions or conduct by Sapienza.

In Answer to Sapienza's Crossclaim, Goldmen denied the allegations contained therein and denied any liability for any losses that Sapienza claims occurred. Goldmen also asserted that Sapienza failed to state a claim upon which relief may be granted; the crossclaim is barred by the doctrine of laches, estoppel and waiver as well as the applicable statutes of limitation.

In the Statement of Answer and Crossclaim filed by Sapienza, he denied each and every allegation contained in the Statement of Claim as well as the Crossclaim brought by Goldmen. Sapienza maintained that he always acted in conformity with the regulations of the industry and with all state and federal laws. Sapienza raised the affirmative defenses of a claim which failed to state a cause of action upon which relief may be granted; estoppel, waiver and ratification; a failure to mitigate damages; claims are barred by applicable statute of limitations and by the doctrine of laches; all transactions were authorized and directed by Claimant and that he assumed all risks. Sapienza maintained that any losses suffered by Claimant were the result of Claimant's own decisions and market fluctuations.

Sapienza alleged, in his Crossclaim against Goldmen that if he is found liable in any way to Claimant, then such liability was the result of actions by Goldmen.

RELIEF REQUESTED

Claimant requested damages of \$40,000.00; punitive damages of \$10,000.00; as well as attorney's fees and the costs of this arbitration.

Goldmen requested that the panel make a determination denying Claimant's claims for relief and awarding Goldmen costs and disbursements, including reasonable attorneys' fees. In the event of any finding of liability against Respondents based on Claimant's claims, Goldmen requested the panel assess the appropriate proportionate share of such damages to Sapienza. In addition, Goldmen requested a denial of the crossclaim raised by Sapienza and dismissing the crossclaim in its entirety.

Sapienza requested that the Claimant's claims be denied and all costs and disbursements including reasonable attorney's fees be assessed to Claimant. In addition, Sapienza requested that in the event of any finding of liability against Respondents based on Claimant's claims, that the panel assess those damages to Respondent Goldmen.

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.

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 Respondents A.S. Goldmen & Co., Inc. and Edward Sapienza are jointly and severally liable to and shall pay to Claimant \$16,500.00; and
2. That the claim for punitive damages is denied; and
3. That the Crossclaim of Respondent A.S. Goldmen & Co., Inc. is denied; and
4. That the Crossclaim of Respondent Edward Sapienza is denied; and
5. That Claimant shall return and sign over ownership to A.S. Goldmen & Co., Inc. the shares of Millennium Sports Management (formerly known as Skylands Park Management) which Claimant currently holds; and
6. That each party shall bear its own costs and expenses, including attorney's fees; and
7. That post-award interest shall be nine percent (9%) if award is not fully complied with within thirty days of the date NASD Regulation serves the Award; and
8. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 of the NASD Regulation Code of Arbitration Procedure ("Code"), Respondent Goldmen is assessed a member surcharge of \$200.00.

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 Claimant at \$1,000.00 and to Respondents, jointly and severally, at \$1,000.00.

Claimant shall receive credit for the \$400.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$600.00.

Respondent Goldmen shall receive credit for the \$600.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Respondents of \$400.00.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

1/21/98

CONCURRING ARBITRATORS' SIGNATURES

Deborah Topper Garren

Deborah Topper Garren, Presiding
Public Arbitrator

James F. Tucker
Public Arbitrator

Ronald T. Dilks
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 29, 1998

DATE

CONCURRING ARBITRATORS' SIGNATURES

1-20-98

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