

## NASD REGULATION AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Samuel P. Chiancola Trustee/Rev. Trust

96-02993

Name of Respondents

A.S. Goldmen & Company, Inc.  
Vincent Caracciolo

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**REPRESENTATION**

For Claimant The Samuel P. Chiancola Revocable Trust ("claimant") appeared Samuel P. Chiancola, trustee of claimant. However, at the hearing conducted on April 18, 1997, on behalf of claimant, appeared Ann Pauly, Esq., of the law offices Richmond, Pauly & Ault LLP located in Boston, Massachusetts.

For Respondents A.S. Goldmen & Company, Inc. ("A.S. Goldmen"), and Vincent Caracciolo ("Caracciolo"), appeared Carole R. Bernstein, Esq., with law offices located in Norwalk, Connecticut.

**CASE INFORMATION**

Statement of Claim was filed on: July 10, 1996.

Claimant's Submission Agreement was signed on: July 25, 1996.

Joint Statement of Answer was filed by respondents on: September 26, 1996.

Respondent A.S. Goldmen did not file a properly notarized Submission Agreement.

Respondent Caracciolo did not file a properly notarized Submission Agreement.

**HEARING INFORMATION**

Pre-Hearing Conference:	February 20, 1997	-	1 session
	April 15, 1997	-	1 session
Hearing Dates/Sessions:	April 18, 1997	-	2 sessions
	April 30, 1997	-	1 session

The hearing held on April 18, 1997 was conducted at the Residence Inn by Marriott located in

New Haven, Connecticut. The hearing held on April 30, 1997 was conducted at the Holiday Inn at Yale University located in New Haven, Connecticut.

### CASE SUMMARY

Claimant alleged that he lost approximately \$50,000 on two stocks he invested in through A.S. Goldmen. Claimant further alleged that, after he initially invested \$2,500.00 in Innovative Technical Systems, Caracciolo suggested that he sell the stock, buy the warrants, and invest more. Claimant also contended that Caracciolo consistently advised him to switch from warrants to stock, from stock to warrants, and to invest more money. In addition, claimant alleged that he incurred tax consequences because the changes from stock to warrants were recorded as sales instead of transfers.

Claimant further contended that, during the fall of 1995, upon Caracciolo's recommendation, he purchased 500 shares of Winfield Capital Corp. ("WCAP") at \$5.00 per share. Claimant maintained that, after he received the prospectus booklet, he contacted Caracciolo because he believed that WCAP was speculative. Claimant further contended that Caracciolo told him that WCAP was a solid company, that A.S. Goldmen brought this stock to market, and that he was very confident that the stock would increase in price. In addition, claimant alleged that, at Caracciolo's suggestion, he purchased an additional 2000 shares of WCAP at \$10.50 per share, which subsequently fell to \$2.50 per share, and that Caracciolo told him to hold the stock for the long term.

Respondents denied all allegations contained in the Statement of Claim. In addition, respondents asserted the following affirmative defenses: 1) the Statement of Claim failed to state a cause of action upon which relief could be granted; 2) claimant waived his purported claims and was estopped from asserting them against respondents; 3) claimant's continued dealings with respondents and failure to complain amounted to a ratification of any alleged acts claimed to have been committed by respondents; 4) claimant failed to mitigate his damages; 5) throughout the time that Caracciolo was claimant's account representative, he acted at all times in a professional manner and in conformity with all applicable rules and regulations and fulfilled his duties and responsibilities in connection with claimant's account in good faith without knowledge of any alleged improper activity; 6) claimant's claims were barred by the applicable statute of limitations; 7) claimant's claims were barred by the doctrine of laches; 8) claimant had full knowledge of all material facts concerning his account including the positions held and the transactions made therein and, accordingly, claimant was estopped from bringing this action; 9) claimant authorized and directed the execution of all transactions in his accounts and, accordingly, was estopped from bringing this proceeding; 10) claimant was a sophisticated investor and assumed the risk of investing in the securities market; 11) claimant's losses, if any, were caused by his own conduct; 12) all risks concerning claimant's investments were properly disclosed to claimant and he knowingly, willingly, and voluntarily decided to assume those risks; 13) claimant's purported causes of action were barred by the Statute of Frauds provision set forth in Section 8-319(c) of the Uniform Commercial Code due to his failure to send written objections to the sales confirmations in questions within ten days of their receipt; 14) any losses suffered by claimant were the result of market conditions and/or fluctuations normally associated with investments in the securities markets.

### **RELIEF REQUESTED**

Claimant requested actual damages in the amount of \$82,725.00.

Respondents requested a determination denying claimant's claims for relief as against them, and awarding them costs and disbursements, including reasonable attorneys' fees incurred by them as a result of this proceeding.

### **OTHER ISSUES CONSIDERED & DECIDED**

The panel made the following rulings concerning respondents who failed to file a properly notarized Submission Agreement in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure ("Code"), the panel found subject matter over this entire controversy.
2. The panel found that A.S. Goldmen was a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over A. S. Goldmen pursuant to Rule 10301(a) of the Code.
3. The panel found that A.S. Goldmen was required to file a properly notarized Submission Agreement pursuant to Rule 10314(b) of the Code.
4. The panel found that Caracciolo was employed by a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Caracciolo pursuant to Rule 10301(a) of the Code.
5. The panel found that Caracciolo was required to file a properly notarized Submission Agreement pursuant to Rule 10314(b) of the Code.

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against respondents are hereby denied in their entirety.
2. Each party shall bear their respective costs, including attorneys' fees.
3. All other requests are hereby denied.

### FORUM FEES

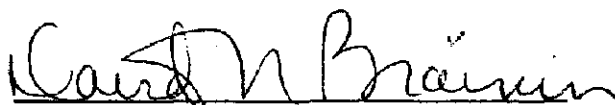
Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation shall keep the \$150.00 non-refundable filing fee and have assessed the following forum fees:

2 pre-hearing conferences	x \$300.00	=	\$ 600.00
<u>3 hearing sessions</u>	<u>x \$500.00</u>	<u>=</u>	<u>\$1,500.00</u>
Total Forum Fees Assessed		=	\$2,100.00

1. Claimant be and hereby is liable for \$1,050.00, representing one-half the total amount of forum fees assessed. Claimant previously deposited \$500.00 with NASD Regulation and, therefore, owes \$550.00.
2. Respondents be and hereby are jointly and severally liable for \$1,050.00, representing one-half of the total amount of forum fees assessed.

Fees are payable to the NASD Regulation, Inc.

Arbitrators' Signatures

A handwritten signature in dark ink, appearing to read "David N. Brainin". The signature is fluid and cursive, with the first name "David" and last name "Brainin" clearly distinguishable.

David N. Brainin, Esq.  
Chairperson-Public Arbitrator

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Howard M. Schott, Esq.  
Public Arbitrator

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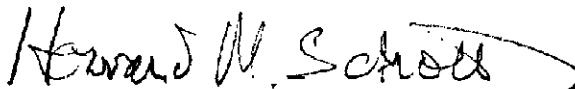
Christine Armstrong, Esq.  
Industry Arbitrator

Date of Decision: July 7, 1997

Arbitrators' Signatures

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David N. Brainin, Esq.  
Chairperson-Public Arbitrator



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Howard M. Schott, Esq.  
Public Arbitrator

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Christine Armstrong, Esq.  
Industry Arbitrator

Date of Decision: July 7, 1997

Arbitrators' Signatures

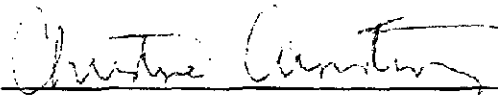
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Christine Armstrong, Esq.  
Industry Arbitrator

Date of Decision: July 7, 1997