

N.A.S.D. ARBITRATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Robert E. and Barbara A. Warren

96-03146

Name of Respondents

A.S. Goldmen & Company
Joseph Piscopo

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers Regulation, Inc. on July 23, 1996, claimants Robert E. Warren and Barbara A. Warren ("claimants"), who appeared Pro Se, alleged that respondent Joe Piscopo ("Piscopo") was their broker at respondent A.S. Goldmen & Company ("A.S. Goldmen"). Claimant Robert Warren ("Warren") alleged that in March 1996 Piscopo failed to execute his sell order for 1,000 shares of Winfield Capital Corp. ("WCAP") common stock. Warren further alleged that when he first contacted Piscopo the bid price for WCAP was \$8 1/2 per share. Claimant also first asserted that prior to leaving on vacation he inquired about the sale and was advised by Piscopo to place a stop loss order 1/4 point below the current \$7 3/8 bid. Claimant further asserted that after his vacation, when he did not receive confirmation of the sale, he contacted Piscopo who informed him that an automatic stop loss order could not be entered on NASDAQ Small Caps Market and, that the price fell too quickly for him to sell. Claimant also asserted that he expressed his dissatisfaction and promised to follow up on Piscopo's "omission" after his vacation.

Claimant alleged that on May 2, 1996 after his vacation, Floyd Wolmeth ("Wolmeth"), an employee at A.S. Goldmen informed him that Piscopo and his partner Peter Laurella ("Laurella") had left the firm. Claimant further alleged that Wolmeth encouraged him to keep his account at A.S. Goldmen. Claimant also alleged that he told Wolmeth about his problems with Piscopo, and also expressed his intent to file a complaint. Claimant alleged that in a conversation with Laurella, he was informed about the difficulties of selling stock at A.S. Goldmen and also that management at A.S. Goldmen did not provide adequate support for WCAP. Claimant contended that on May 8, 1996, he submitted his complaint to A.S. Goldmen's Compliance Officer, who failed to respond so he transferred his account.

Respondents A.S. Goldmen & Company and Joseph Piscopo ("Respondents"), through their representative and counsel Phoebe A. Wilkinson of the firm, Chadbourne & Parke, located in New York City, maintained that Piscopo was the account executive for claimants' account at A.S. Goldmen. Respondents further maintained that all transactions in claimants' account were executed with the express consent and authority of claimants. Respondents specifically denied that Piscopo ever received an order to sell 1,000 shares of WCAP from claimants' account and also denied that Piscopo represented to claimant that a stop loss order would be placed. Respondents contended that in March 1996, when claimant discussed the sale of WCAP with Piscopo, he was advised against selling at that time because of the price of WCAP. Respondents further contended that Piscopo never received "definitive instruction" from claimants to sell their position.

Respondents requested dismissal of the claim and maintained that the panel consider that claimant has wavered as to the date of the alleged sell order, that it sold positions for other retail customers in March 1996 and did not execute claimants' sell order because he never gave such an order, that claimants' naivete regarding stop loss orders on NASDAQ is belied by his significant and similar activities with other brokerage houses, Piscopo's compensation was commission oriented and by failing to execute claimants' sell order, would have deprived himself of a commission payment, that claimant failed to mitigate his damages and did not sell his WCAP position until after he transferred his account, five months after the alleged sell order and, claimants' conversations in March 1996 do not mean that a sell order was given.

RELIEF REQUESTED

Claimants Robert E. Warren and Barbara A. Warren requested \$5,415.00 which is the amount they should have received if the stock was sold on March 20, 1996 at \$7 3/8 (\$7,375.00), minus the amount they received from the sale of the stock (\$1,960.00), excluding fees and interest.

Respondents A.S. Goldmen & Company and Joe Piscopo requested that the Statement of Claim be dismissed in its entirety, and that Respondents be granted all costs and expenses of this action.

AWARD

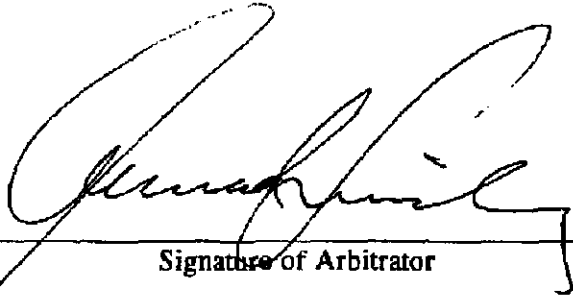
Pursuant to Rule 10302 of the NASD Code of Arbitration Procedure, a single Public Arbitrator, Arnold Linsky, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimants Robert E. Warren and Barbara A. Warren on July 17, 1996 and not by respondents A.S. Goldmen & Company and Joe Piscopo as is required by Rules 10301 and 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. Respondent A.S. Goldmen & Company is liable and shall pay to the claimants Robert E. Warren and Barbara A. Warren \$2,000 in actual damages.
2. The responsibility of respondent Joe Piscopo, regarding the claims of claimants Robert E. Warren and Barbara A. Warren, has been set aside with prejudice.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the claimants Robert E. Warren and Barbara A. Warren shall be retained by NASD Regulation, Inc. Respondent A.S. Goldmen & Company is liable and shall pay to the claimants Robert E. Warren and Barbara A. Warren \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **ARNOLD LIMSKY**, 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 this instrument, which is my award.



Signature of Arbitrator

DATE OF DECISION: **March 7, 1997**