

**NASD Regulation, Inc. Award**

NASD Regulation, Inc. Office of Dispute Resolution

---

In the Matter of the Arbitration Between

Name of Claimant

Ali Asghar Salehi

and

Case No. 96-03388

Name of Respondent

A.S. Goldmen & Company, Inc.,  
Vincent Caracciolo,  
Marc Colatrella, and  
Charles Garofalo

---

**REPRESENTATION OF PARTIES**

Ali Asghar Salehi ("Claimant") was represented by Greg Tilton, Esq., of Bell & Henry, LLP, Houston, Texas.

A.S. Goldmen & Company, Inc., Vincent Caracciolo, Marc Colatrella, and Charles Garofalo (collectively referred to as "Respondents") were represented by Carole R. Bernstein, Esq., Westport, Connecticut.

**CASE INFORMATION**

Claimant filed the Statement of Claim on or about August 7, 1996 and signed the Submission Agreement of Claimant on August 5, 1996. Claimant filed an Amended Statement of Claim on or about October 6, 1997.

Respondents filed the Statement of Answer on or about November 14, 1996. Respondents filed the Statement of Answer to the Amended Statement of Claim on or about November 24, 1997.

**HEARING INFORMATION**

The Hearing was held on August 19 and 20, 1998 for two (2) sessions each day in Houston, Texas for a total of four (4) sessions.

### CASE SUMMARY

In their Statement of Claim, Claimants alleged that Respondents: engaged in common law fraud by making misrepresentations regarding Respondents' intent in the handling of Claimant's account; failed to execute an order; were negligent in advising Claimant to invest in unsuitable and improper securities, and in failing to invest his funds in accordance with Claimant's needs and objectives; breached their fiduciary duty by insisting that Claimant acquire and remain in unsuitable stocks; and violated NYSE Rule 405 due to the investments sold to Claimant. Claimant also alleged that A.S. Goldman & Company, Inc. was negligent in failing to supervise the activities of the various brokers associated with Claimant's account. The allegations arose out of transactions in corporate stocks, more fully covered at the hearing.

In their Answer, Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically asserted the following affirmative defenses: the Statement of Claim failed to state a cause of action upon which relief may be granted; Claimant received confirmations and account statements in a timely fashion; Claimant's continued dealings with Respondent and failure to complain amounted to a ratification of Respondents alleged acts; failure to mitigate damages; any alleged losses suffered by the Claimant were the result of market conditions and/or fluctuations normally associated with investments in the securities market; throughout the time that Garofalo, Caracciolo, and Colatrella were Claimant's brokers, they acted in a professional manner and in conformity with all applicable rules and regulations; Claimant's claims were barred by the applicable statute of limitations; Claimant's claims were barred by the doctrine of laches; Claimant's claims were barred by the doctrine of estoppel; Claimant's losses, if any, were caused by his own conduct; all risks concerning Claimant's investments were properly disclosed to claimant and he knowingly, willingly, and voluntarily decided to assume those risks; Claimant's causes of action were barred by the Statute of Frauds provision set in Section 8-319(c) of the Uniform Commercial Code due to his failure to send written objections to the sales confirmations in question within ten days of their receipt.

### RELIEF REQUESTED

In their Statement of Claim, Claimants requested an award in the amount of the following:

- 1) Compensatory damages of at least \$62,000.000.
- 2) Such punitive and exemplary damages as the panel determines appropriate.
- 3) Reasonable attorneys fees and costs
- 4) Such further relief in law or equity which the panel deems suitable.

In their Answer, Respondents denied the claims asserted against them and asked the panel to award them costs and attorneys' fees.

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

Respondents filed a Motion to Dismiss on or about July 8, 1997. Claimant responded to the motion on or about July 23, 1997. After review of the motion and response, and deliberation, the undersigned Arbitrators denied the motion.

Claimant filed a Motion to Amend the Claim on or about October 6, 1997. After review of the motion and Respondents' objection filed on or about October 20, 1997, the undersigned Arbitrators granted the motion.

Respondents filed a Motion to Strike a Portion of the Amended Claim on or about November 17, 1997. Claimant responded on or about December 16, 1997. After consideration, the undersigned Arbitrators denied the motion.

Respondents did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

### **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. Claimant, Ali Asghar Salehi's claims are, and each of them, denied in their entirety and dismissed with prejudice; and
2. With the exception of forum fees addressed below, all other claims and relief requested not specifically award are, and each of them, denied in their entirety and dismissed with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$500.00 per hearing session and \$300 for each

pre-hearing conference, if any. There were four (4) hearing sessions x \$500.00 = \$2,000.00 in forum fees. Pursuant to Rule 10332(b) of the Code of Arbitration Procedure ("the Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150.00 and shall retain as forum fees the hearing session deposit in the amount of \$500.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant, Ali Asghar Salehi. Claimant, Ali Asghar Salehi is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution \$500.00 in additional forum fees. Claimant, Ali Asghar Salehi is also liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution \$150.00 for the postponement fee assessed by the panel.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, Respondent, A.S. Goldmen & Company, Inc. is liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the \$200.00 member surcharge. Pursuant to Rule 10332 of the Code, Respondent, A.S. Goldmen & Company is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution \$1,000.00 in forum fees. In addition, Respondent, A.S. Goldmen & Company is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution \$150.00 for the postponement fee assessed by the panel.

Checks may be made payable to the NASD Regulation, Inc. Office of Dispute Resolution.

R. Lee Britton, Jr., Esq.  
R. Lee Britton, Jr., Esq.  
Public Arbitrator, Presiding Chair

September 23, 1998

Charles C. Bailey  
Charles C. Bailey  
Public Arbitrator

September 25, 1998

September 29, 1998  
James M. Alexander  
Industry Arbitrator

September 29, 1998

For NASD use only:  
Date served: October 8, 1998