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N.A.S.D. ARBITRATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

James E. Hayes

96-04036

Name of Respondents

A.S. Goldmen & Company, Inc.  
Everen Clearing Corp.

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CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on September 10, 1996, claimant James Hayes ("claimant"), who appeared Pro Se, alleged that respondents A.S. Goldmen & Company, Inc. ("A.S. Goldmen") and Everen Clearing Corporation ("ECC") owes him money. Claimant further alleged that on November 13, 1995, he sent a letter via UPS to Patrick Flanagan ("Flanagan"), his broker at A.S. Goldmen. Claimant also alleged that on October 31, 1995, his securities portfolio was \$11,625.00. Claimant asserted that on November 30, 1995, his securities portfolio on \$12,625.00. Claimant further asserted that on November 13, 1995, he wrote a letter to A.S. Goldmen, requesting that they close out his account and mail him a check. Claimant also asserted that when a check had still not been received at the beginning of December 1995, he called to speak with Flanagan, and found out that he no longer was there and that his shares had not been sold as he had requested. Claimant contended that since the sale of his shares he had been writing to all the organizations to investigate A.S. Goldmen, and to get the balanced of the monies that he is due.

Respondents A.S. Goldmen and ECC (collectively referred to as "respondents") through their representative and counsel Carole Bernstein, a sole practitioner, located in Norwalk, Connecticut, maintained that claimant has absolutely no claim against respondents and instead has demonstrated utter greed, among other things, that motivates and underlies this entire proceeding. Respondents further maintained that claimant's letter was sent to Flanagan while he was preparing to leave his position at A.S. Goldmen. Respondents also maintained during the time of transition and confusion, claimant's letter was inadvertently misplaced. Respondents contended several weeks later, when claimant brought to A.S. Goldmen's attention that his stock had not been sold on November 13, 1995, as he requested, upon further investigation. Respondents further contended claimant's November 13, 1995, sell order was honored and indeed, both positions in claimant's account were sold on January 10, 1996, as of November 13, 1995. Respondents also contended that claimant received payment in the amount of \$9,460.00 for the sale of his stocks, accordingly, claimant's sell order was executed consistent with his instructions and he has no claim whatsoever. Respondents maintained that ECC is the clearing broker for A.S. Goldmen, and has no involvement with the daily functions of a brokerage firm.

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**RELIEF REQUESTED**

Claimant James Hayes requested \$3,165.00 in damages and \$125.00 for the filing fee.

Respondents A.S. Goldmen and ECC requested that the claims of claimant be dismissed in their entirety, plus defense of this frivolous action, including attorneys' fees.

**OTHER ISSUES CONSIDERED & DECIDED**

The arbitrator reviewed and considered respondents A.S. Goldmen and ECC's Motion to Dismiss. The Motion was denied.

**AWARD**


Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Myron Dunay, was selected to review the matter in controversy between the parties set forth in Submission to Arbitration signed by claimant James Hayes on September 9, 1996 and by respondents A.S. Goldmen on December 30, 1996 and by ECC on January 6, 1997 as required by Rules 10301 and 10302 of the 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. The claims of claimant James Hayes against respondents A.S. Goldmen and ECC are dismissed in their entirety.
2. The claims of respondents A.S. Goldmen and ECC against claimant James Hayes are dismissed in their entirety.
3. All other relief requests are denied.
4. The \$125.00 filing fee previously deposited by claimant shall be retained by NASD Regulation, Inc.

**AFFIRMATION**

I, Myron Dunay, Esq., do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

  
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Myron Dunay, Esq.

Date of Decision: May 19, 1997