

## **N.A.S.D. REGULATION, INC. AWARD**

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CASE: 98 - 00058

Phillip Mazziotta, claimant vs. A.S. Goldmen & Co., respondent.

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### **ATTORNEYS:**

Claimant appeared Pro Se. - Ramsey, NJ.

For respondent appeared Carole R. Bernstein, Esq., Norwalk, CT.

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DATE FILED: 1/6/98

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CASE SUMMARY: Claimant alleged account negligence and failure to supervise.

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### **Claim Data**

Claim: \$3,000.00  
Filing Fee: \$.00  
Other: \$.00

### **Award Data**

Award: \$3,000.00  
Filing Fee: \$125.00  
Other: \$.00

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AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent is liable and shall pay to the claimant \$3,000.00. 2) All other relief requests are denied. 3) The \$125.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the claimant, shall be retained by NASD Regulation, Inc. 4) Respondent is liable and shall pay claimant \$125.00 as reimbursement of the filing fee.

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OTHER FEES: Pursuant to Rule 10333 of the Code, respondent A.S. Goldmen & Company, Inc., has paid to NASD Regulation, Inc. the \$200.00 Member Surcharge previously invoiced.

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**ARBITRATOR'S REPORT:** The issue in this case is over claimant's order to purchase 500 shares of Westinghouse stock and Repondent's subsequent cancellation of that transaction on the ground that payment has not been received by settlement date. Respondent defends its action as having been in accordance with its Terms and conditions as printed on its confirmation, which state, in part, "If payment or delivery is not made by the settlement date, we reserve the right without further notice to charge interest on the amount due shown above, at our current rate on customer margin accounts, or to sell securities purchased and hold you liable for any loss thereby incurred, or to cancel this transaction".

There is no evidence that Claimant was requested to maintain a cash balance with Respondent

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Federal Express, and a Federal Express envelope was provided for the remittance. Claimant was accustomed to receiving numerous telephone calls from the Respondent's representatives. It is customary industry practice to advise executions by telephone. Respondent does not deny that such a call was not made in this instance. Claimant mailed his check promptly after receiving a confirmation. Furthermore, canceling the transaction is not the only action Respondent could have taken and is not in the spirit of claims Respondent makes in the brochure given to Claimant at the time Claimant opened his account.

This brochure states, for example:

- \* "...what they do is guided by the basic principle that the client's best interest must always come first." p.3
- \* "...our total commitment to the principle that our clients' needs are paramount." p.4
- \* "Every investment, for every client, must be accomplished in a way that motivates that client to want to invest with us again, and again, and again." p. 4, 6

Respondent's Motion to Dismiss is denied. Claimant is awarded the sum of \$3,000. NASD fees are assessed against Respondent.

#### AFFIRMATION

I, Carl W. Klemme, do hereby 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.

  
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Carl W. Klemme

October 14, 1998

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Date of Award