

AWARD
. NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimants

John A. McGowan and Nancy McGowan

and

98-03942
Denver, Colorado

Name of Respondents

A S. Goldmen & Co., Inc.
Karim Michael Lamarti
Miguel Angel Rodriguez
David Harris Karson
Anthony John Marchiano and
Stuart Edward Winkler

REPRESENTATION OF PARTIES

John A. McGowan and Nancy McGowan ("**Claimant**") was represented by Richard A. Nervig, Esq., of Law Offices of Richard A. Nervig, Denver, Colorado and Paul L. Vomdran, Esq., Fleming & Vomdran, L.L.C., Denver, Colorado.

A.S. Goldmen & Co., Inc. ("**Respondent Goldmen**") was represented by Glenn A. Duhl, Esq., Siegel, O'Connor, Schiff & Zangari, P.C., New Haven, Connecticut.

Karim Michael Lamarti ("**Respondent Lamarti**") was represented by Glenn A. Duhl, Esq., Siegel, O'Connor, Schiff & Zangari, P.C., New Haven, Connecticut. Mr. Lamarti did not appear at the hearing of this matter, his request to be allowed to participate telephonically having been denied by the panel.

Miguel Angel Rodriguez ("**Respondent Rodriguez**") was represented by Leslie J. Sloan, Esq., New York, New York.

David Harris Karson ("**Respondent Karson**") was represented by Richard Weinberger, Esq., Ballon Stoll Bader & Nadler, P.C., New York, New York.

The Statement of Claim was filed on or about October 22, 1998. Amended Statement of Claim was filed on or about October 19, 1999. Claimants' Response to Miguel A. Rodriguez' Motion for

Summary Judgment was filed on or about January 31, 2000. Second Amended Statement of Claim was filed on or about February 22, 2000. Submission Agreement of Claimant John A. McGowan and Nancy McGowan was signed on December 8, 1998.

Respondents A.S. Goldmen & Co., Inc. and Michael Lamarti's Statement of Answer was filed on or about March 26, 1999. Submission Agreement of Respondent A.S. Goldmen & Co., Inc. was signed on February 18, 1999 by Stuart Winkler. Submission Agreement of Respondent Karim Michael Lamarti was signed on March 30, 1999.

Respondent Miguel Angel Rodriguez' Statement of Answer was filed on or about July 22, 1999. Respondent Miguel Angel Rodriguez' Motion for Summary Judgment was filed on or about January 13, 2000. Respondent Miguel Angel Rodriguez' Reply to Claimants' Response to His Motion for Summary Judgment was filed on or about February 4, 2000.

Respondent Karson's Statement of Answer to the Amended Statement of Claim was filed on or about March 29, 1999. Submission Agreement of Respondent David Harris Karson was signed on March 29, 1999.

CASE SUMMARY

Claimant alleged that this claim arises from Respondents Rodriguez, Lamarti and Karson's improper execution of excessive, unauthorized and unsuitable transactions in Claimants' account in contravention of the fiduciary duties owed by Respondents to Claimants. It was alleged that said transactions were excessive in light of Claimants' investment needs and objectives and many of such trades were executed without the knowledge or consent of Claimants. Claimants alleged that Respondents executed over \$204,406.18 worth of trades in Claimants' account which generated estimated commissions of over \$3,293.48 and which also caused trading losses of \$77,696.03. Furthermore, Claimants alleged that the investment recommendations and advice made by Respondents to Claimants were unsuitable for a retiree with Claimants' net worth and investment experience. Claimants are asserting claims of fraud based upon churning, unauthorized trading, suitability, breach of fiduciary duty and violations of both the Colorado Blue Sky Act ("CBSA") and Consumer Protection Acts ("CCPA"). In the Second Amended Statement of Claim, Claimants asserted claims against Anthony John Marchiano and Stuart Edward Winkler as control persons of Respondent A.S. Goldmen & Co., Inc.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that they did not engage in any improper conduct and neither executed excessive transactions, unauthorized transactions or unsuitable transactions in Claimants' account. Claimant also informed Respondents that he was an experienced investor with substantial assets and understanding of the nature of their investments.

RELIEF REQUESTED

Claimants requested that Respondents be found jointly and severally liable to them for the following damages:

- Losses to McGowan's original principal totaling approximately \$77,696.03.
- The income McGowan would have earned on his investments had such been invested in suitable securities.
- Reasonable attorneys' fees and costs pursuant to §11-51-604, C.R.S. and §6-1-113, C.R.S.
- Treble actual damages pursuant to §6-1-113(2), C.R.S.
- Punitive damages due to Respondents' wanton, willful and malicious conduct in an amount to be determined by the panel.

Respondents A. S. Goldmen & Co., Inc. and Michael Lamarti requested a determination denying Claimants' claims for relief as against them. In addition, Respondents A. S. Goldmen & Co., Inc. and Michael Lamarti requested an award of costs and disbursements, including reasonable attorneys' fees incurred by them as a result of this proceeding.

Respondent Rodriguez requested a determination denying Claimants' claims for relief as against him. In addition, Respondent Rodriguez requested an award of costs and disbursements, including reasonable attorneys' fees incurred by them as a result of this proceeding.

Respondent Karson requested the dismissal of the claims asserted against him. Respondent Karson also sought contribution and/or indemnification from the other Respondents if any finding is made that Claimants are entitled to damages against Respondent Karson by reason of their claim.

OTHER ISSUES CONSIDERED & DECIDED

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 the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD").

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. All claims asserted in this matter shall be and hereby are dismissed in their entirety. As a result of this dismissal, there is no underlying liability which would result in findings against

control persons. Therefore, the claims asserted against Respondents Anthony John Marchiano and Stuart Edward Winkler asserted in the Second Amended Statement of Claim shall be and hereby are dismissed.

2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim: SD Regulation, Inc.

Initial claim filing fee = \$200.00

Member Fees

Member fees are assessed to each member ~~firm~~ that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member ~~firm~~ is A.S. Goldman & Co., Inc.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Number (#) Pre-hearing session(s) with Panel x \$750.00	= \$ 750.00
Pre-hearing conference(s): August 17, 1999 1 session	
Eight (8) Hearing sessions x \$750.00	= \$6,000.00

Hearing Date(s):	April 4, 2000	3 sessions
	April 5, 2000	3 sessions
	<u>April 6, 2000</u>	<u>2 sessions</u>
Total Forum Fees		= \$6,750.00

The Arbitration Panel has assessed \$750.00 of the forum fees to John A. McGowan and Nancy McGowan

The Arbitration Panel has assessed \$2,000.00 of the forum fees to A.S. Goldmen & Co., Inc

The Arbitration Panel has assessed \$4,000.00 of the forum fees to Karim Michael Lamarti

Fee Summary

Claimants, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 200.00
<u>Forum Fees</u>	<u>= \$ 750.00</u>
Total Fees	= \$ 950.00
<u>Less payments</u>	<u>= \$ 950.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

Respondent, A.S. Goldmen & Co., Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
	<u>= \$2,000.00</u>
Total Fees	= \$6,600.00
<u>Less payments</u>	<u>= \$1,500.00</u>
Balance Due NASD Regulation, Inc	= \$5,100.00

Respondent, Karim Michael Lamarti, shall be and hereby is liable for:

<u>Forum Fees</u>	<u>= \$4,000.00</u>
Balance Due NASD Regulation, Inc.	= \$4,000.00

All balances are due to NASD Regulation, Inc.

Dated:

/s/ John J. Kelly, jr.

John J. Kelly, Jr., Esq.
Public Arbitrator, Presiding Chair

April 17, 2000

/s/ Barbara L. Edin

Barbara L. Edin, Esq.
Public Arbitrator

April 14, 2000

/s/ Gerald K. Moore

Gerald K. Moore
Industry Arbitrator

April 17, 2000

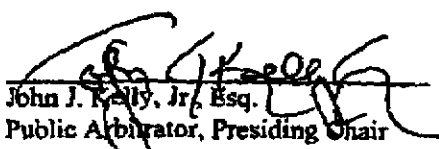
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\$ 0.00

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration no. 98-03942
Award Page 6 of 6

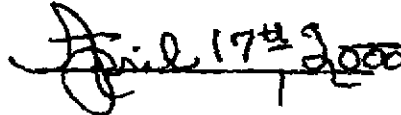
All balances are due to NASD Regulation, Inc.


John J. Kelly, Jr., Esq.
Public Arbitrator, Presiding Chair

Barbara L. Edin, Esq.
Public Arbitrator

Gerald K. Moore
Industry Arbitrator

Dated:

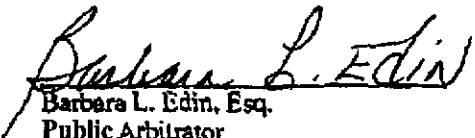

April 17th 2000

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 98-03942
Award Page 6 of 6

All balance are due to NASD Regulation, Inc.

Dated:

John J. Kelly, Jr., Esq.
Public Arbitrator, Presiding Chair


Barbara L. Edin, Esq.
Public Arbitrator

4-14-00

Gerald K. Moore
Industry Arbitrator


NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 98-03942
Award Page 6 of 6

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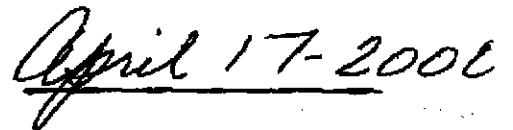
Dated:

John J. Kelly, Jr., Esq.
Public Arbitrator, Presiding Chair

Barbara L. Edin, Esq.
Public Arbitrator



Gerald K. Moore
Industry Arbitrator



April 17-2000

Industry Arbitrator