

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Bernard E. Lloyd, (Claimant) vs. Golden, Lender Financial Group, Inc., Foster Gibbons and Michael Park, (Respondents)

Case Number: 99-02219

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Bernard E. Lloyd, hereinafter referred to as "Claimant": James Dolan, Esq., a sole practitioner, Garden City, NY.

Respondents, Golden, Lender Financial Group, Inc. ("Golden") and Foster Gibbons ("Gibbons"), did not appear at the hearing in this matter. Previously represented by: Foster J. Gibbons, Esq., General Counsel, Golden, Lender Financial Group, Inc., New York, NY.

Respondent, Michael Park ("Park"): John E. Lawlor, Esq., a sole practitioner, Mineola, NY. Park originally appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: May 11, 1999.

Claimant signed the Uniform Submission Agreement: April 29, 1999.

Joint Statement of Answer filed by Golden and Gibbons on or about: July 14, 1999.

Golden did not sign the Uniform Submission Agreement.

Gibbons did not sign the Uniform Submission Agreement.

Statement of Answer filed by Park on or about: July 14, 1999.

Park signed the Uniform Submission Agreement: July 14, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: violations of federal and state laws, exchange rules and regulations prohibiting fraud in connection with the sale of unspecified securities; trading on margin without a margin account agreement; misrepresentation and failure to disclose the risks of trading on margin; excessive margin balance and interest; violation of self-regulatory organization rules concerning suitability; unauthorized transactions; short-term trading in unspecified securities; excessive commissions or mark-ups and mark-downs; churning; failure to establish, maintain, and enforce reasonable supervisory

procedures; failure to adequately supervise; issuance of a bad check; failure and refusal to liquidate Claimant's account and to disburse the cash balance in his account; and breach of fiduciary obligations.

Unless specifically admitted in their Answer, Golden and Gibbons denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim against Golden and Gibbons; any losses sustained by Claimant are attributable to market forces and price fluctuations wholly outside Respondents' ability to have predicted or controlled and to Claimant's own decisions to buy and sell and/or his assumption of significant margin debt; Claimant is barred from recovering based on the doctrine of unclean hands and by principles of waiver and ratification; Golden and its representatives at all times acted in conformity with the standards of conduct of the industry and with NASD rules; Golden and its representatives faithfully discharged their fiduciary duties to Claimant; Claimant was provided with full and fair disclosure of material facts concerning each securities purchase proposed to him or executed through his account and freely consented to or directed each such executed trade; Claimant has no private right of action based on purported violations of NASD rules regarding supervision; Claimant failed to mitigate his damages; Claimant was apprised of and was reasonably believed to have understood the substantial risks to capital represented by securities trading he engaged in through his Golden account; Claimant freely approved and/or ratified all activities posted in his account; Claimant possessed the intellectual acuity and financial acumen to properly determine his own financial interest and to independently evaluate his broker's advice, recommendations, and suggestions and Claimant actively participated in the investment decisions for his account; and Respondents reasonably believed that each recommendation made to Claimant was appropriate in light of Claimant's disclosed objectives and background, and that Park had a reasonable basis for making each such recommendation.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$24,000.00, plus benefit-of-the-bargain or loss of value damages, 9% interest from the date of each loss to the date of the Award, punitive damages in the amount of \$75,000.00, reasonable attorney's fees, and the costs and disbursements of this arbitration.

Golden and Gibbons requested that all claims asserted against them be denied in their entirety, and that they be awarded all costs, including attorney's fees, assessments, and forum fees incurred by them in defending this action.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing in this matter, Park entered into a settlement agreement with Claimant.

Pursuant to the agreement of the parties, this matter was heard by a sole arbitrator.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrator (the "Arbitrator") determined that Golden and Gibbons have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Golden and Gibbons did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Arbitrator 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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Golden and Gibbons be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$6,850.00 as compensatory damages, plus interest in the amount of \$1,500.00.
2. Golden and Gibbons be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$5,000.00 as attorney's fees. The Arbitrator awarded attorney's fees after considering the case law provided by Claimant, Spector v. Torenberg, 852 F. Supp. 201.
3. Golden and Gibbons be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$225.00 for Claimant's expert witness fees.

4. Golden and Gibbons be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$225.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
5. Claimant's request for punitive damages is hereby denied.
6. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 225.00
--------------------------	-------------

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Golden, Lender Financial Group, Inc. is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00

Forum Fees and Assessments

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

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: August 24, 2000	1 session

One (1) Hearing session x \$450.00	= \$ 450.00
Hearing Date: October 31, 2000	1 session

Total Forum Fees	= \$ 900.00
------------------	-------------

The Arbitrator has assessed all of the forum fees jointly and severally against Golden and Gibbons.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 975.00
<u>Refund Due Claimant</u>	= \$ 750.00

As stated in the "Award" section above, Golden and Gibbons are jointly and severally liable and shall reimburse Claimant for the \$225.00 filing fee.

2. Golden be and hereby is solely liable for:

<u>Member Fees</u>	= \$1,600.00
<u>Total Fees</u>	= \$1,600.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$1,600.00

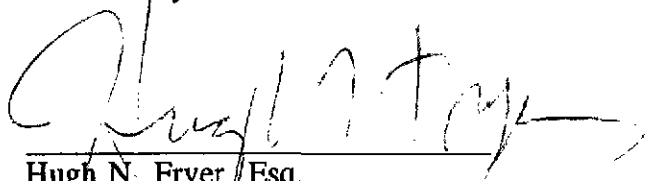
3. Golden and Gibbons be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 900.00
<u>Total Fees</u>	= \$ 900.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 900.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Arbitrator's Signature

I, the undersigned arbitrator, 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.



Hugh N. Fryer, Esq.
Public Arbitrator

11-9-00

Signature Date

November 15, 2000
Date of Service (For NASD office use only)