

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Lon W. Mericle, Claimant vs. A.S. Goldmen & Company, Inc., Stuart Winkler,  
Anthony Marchiano and Joseph William Donohue, Respondents.

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Case Number: 99-02854 Hearing Site: Milwaukee, Wisconsin

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**REPRESENTATION OF PARTIES**

Claimant, Lon W. Mericle ("Mericle") (hereinafter referred to as "Claimant"), was represented by Christine McNamara, Esquire, of The Law Offices of Patrick Baldwin, Menlow Park, California.

Respondents, A.S. Goldmen & Company, Inc. ("A.S. Goldmen & Co."), and Anthony Marchiano ("Marchiano"), were represented by Burleigh L. Singleton, Esquire, of Kirkpatrick Stockton, LLP, Atlanta, Georgia.

Respondent, Stuart Winkler ("Winkler"), was not present at the hearing and was not represented by counsel at the hearing. Prior to the hearing, Respondent Winkler had been represented by Carole R. Bernstein, Esquire, Westport, Connecticut.

Respondent, Joseph William Donohue ("Donohue"), was not present at the hearing and was not represented by counsel at the hearing. Prior to the hearing, Respondent Donohue had been represented by Eric S. Hutner, Esquire, New York, New York.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on or about June 23, 1999.  
Claimant signed the Uniform Submission Agreement on June 25, 1999.

Respondents A.S. Goldmen & Co. and Marchiano filed their Joint Statement of Answer on or about September 10, 1999.  
Neither A.S. Goldmen & Co. or Marchiano signed the Uniform Submission Agreement.

Respondent Joseph William Donohue filed his Statement of Answer on or about September 20, 1999.  
Respondent Joseph William Donohue signed the Uniform Submission Agreement on September 14, 1999.

Respondent Winkler filed a Motion to Stay the Arbitration on or about September 19, 1999, but did not file an Answer or sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant made the following allegations in his Statement of Claim: breach of contract; fraud; misrepresentation; breach of fiduciary duty; breach of the NASD Rules of Fair Practice; negligence; failure to supervise; intentional infliction of emotional distress; violations of Wisconsin securities statutes; unfair trade practices; unsuitability; and violations of state and federal securities laws. These claims were related to purchases of the following securities: News Communications, Inc., Xytronix, Inc., Cinema Ride, Inc., Innodata Corp., American Cinema Stores, Inc. stocks and warrants ("ASCI"), Skylands Park Management, Inc., Medicis Pharmaceutical Corp., Pamet Systems, Inc. stocks and warrants, and Sports Media, Inc.

In their Joint Statement of Answer, Respondents A.S. Goldman & Co. and Marchiano denied all liability to Claimant and asserted various affirmative defenses, including: failure to state a claim; waiver; estoppel; ratification; statute of limitations violations; laches; assumption of the risk; contributory negligence; and failure to mitigate.

Respondent Donohue denied all liability to Claimant and asserted various affirmative defenses, including: statute of limitations violations; laches; and failure to state a claim.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$165,000.00
Punitive Damages	unspecified
Attorney's Fees	unspecified
Costs	unspecified

Respondents A.S. Goldman & Co. and Marchiano requested that Claimant's Statement of Claim be dismissed in its entirety.

Respondent Donohue requested that Claimant's Statement of Claim be dismissed in its entirety, and that he be awarded costs and attorney's fees.

Respondent Winkler did not file an Answer, but did request that the arbitration be stayed as to him pending the resolution of a previously filed criminal case in state court.

### **OTHER ISSUES CONSIDERED AND DECIDED**

With respect to Respondent Winkler's Motion to Stay the Arbitration, the Panel denied the Motion, but scheduled the hearing on November 13, 2000, to avoid conflict with the criminal trial.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned Panel determined that Respondent Winkler had 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 Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents A.S. Goldmen & Co. and Marchiano did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code, and having answered the claim, appeared and presented defenses at the hearing, are bound by the determination of the Panel on all issues submitted.

Respondent Winkler did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code, and having responded to the claim, and having received due notice of the hearing, is bound by the determination of the Panel on all issues submitted

At the hearing on November 13, 2000, Claimant informed the Panel that he had settled his claims with Respondent Joseph William Donohue, and therefore withdrew his claims against Respondent Donohue with prejudice.

Respondents A.S. Goldmen & Co., Marchiano and Donohue all filed Motions to Dismiss based on statute of limitations violations. The Panel refrained from ruling on these Motions prior to the hearing. Respondents A.S. Goldmen & Co. and Marchiano renewed their Motions to Dismiss at the close of Claimant's case at the hearing. The Panel considered the Motions and the evidence presented during Claimant's case-in-chief, and ruled as follows:

### **AWARD**

After considering the pleadings 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:

Claimant's Statement of Claim, in its entirety, is dismissed with prejudice. All requested relief is denied.

Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$ 300
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#### **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, the member firm is A.S. Goldmen & Company, Inc.

Member surcharge	= \$1,500
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$2,500

#### **Adjournment Fees**

Respondents A.S. Goldmen & Co. and Donohue requested adjournments during these proceedings. Both requests were denied. There are no adjournment fees.

#### **Forum Fees and Assessments**

The 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:

One (1) Pre-hearing conference with Panel x \$1,125	= \$1,125
Pre-hearing conferences: January 20, 2000	1 session

Two (2) Hearing sessions x \$1,125	= \$2,250
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Hearing Date: November 13, 2000	2 sessions
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Total Forum Fees	= \$3,375
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The Panel has assessed \$1,687.50 in Forum Fees to Claimant, Lon W. Mericle, and \$1,687.50 in Forum Fees to Respondents, A.S. Goldmen & Co., Winkler and Marchiano, jointly and severally.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,687.50
Total Fees	= \$1,987.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 562.50

2. Respondent, A.S. Goldmen & Co., be and hereby is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$4,600.00

3. Respondents A.S. Goldmen & Co., Winkler and Marchiano, be and hereby are jointly and severally liable for:

Forum Fees	= \$1,687.50
Total Fees	= \$1,687.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$1,687.50

All balances are due to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signatures**

Thomas F. Mahoney  
Thomas F. Mahoney, Esq.  
Public Arbitrator, Presiding Chair

January 26, 2001  
Signature Date

Larry Carlson  
Larry Carlson, Esq.  
Public Arbitrator

January 26, 2001  
Signature Date

Donald V. Anderson  
Donald V. Anderson  
Non-Public Arbitrator

January 26, 2001  
Signature Date

January 26, 2001  
Date of Service (For NASD-DR office use only)

NASD-DR Award

Lon W. Mericle vs. A.S. Goldman &amp; Company, Inc., Stuart Winkler, et al

Arbitration # 99-02854

Page 5 of 5

**Fee Summary****1. Claimant be and hereby is solely liable for:**

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,687.50
Total Fees	= \$1,987.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 562.50

**2. Respondent, A.S. Goldman & Co., be and hereby is solely liable for:**

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$4,600.00

**3. Respondents A.S. Goldman & Co., Winkler and Marchiano, be and hereby are jointly and severally liable for:**

Forum Fees	= \$1,687.50
Total Fees	= \$1,687.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$1,687.50

All balances are due to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signatures**

Thomas F. Mahoney  
Thomas F. Mahoney, Esq.  
Public Arbitrator, Presiding Chair

26 JAN 2001  
Signature Date

\_\_\_\_\_  
Larry Carlson, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Donald V. Anderson  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD-DR office use only)

**NASD-DR Award**

Lon W. Martele vs. A.S. Goldman &amp; Company, Inc., Stuart Winkler, et al

Arbitration #99-02854

Page 3 of 3

**Fee Summary****1. Claimant be and hereby is solely liable for:**

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,687.50
Total Fees	= \$1,987.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 562.50

**2. Respondent, A.S. Goldman & Co. be and hereby is solely liable for:**

Member Fees	= \$4,800.00
Total Fees	= \$4,800.00
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$4,800.00


**3. Respondents A.S. Goldman & Co., Winkler and Marchiano, be and hereby are jointly and severally liable for:**

Forum Fees	= \$1,687.50
Total Fees	= \$1,687.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$1,687.50

All balances are due to NASD Dispute Resolution, Inc.

**Consenting Arbitrators' Signatures**

Thomas F. Mahoney, Esq.  
Public Arbitrator, Presiding Chair

  
Larry Carlson, Esq.  
Public Arbitrator

Donald V. Anderson  
Non-Public Arbitrator

Signature Date

26 JAN 2001

Signature Date

Signature Date

Date of Service (For NASD-DR office use only)

## NASD-DR Award

Lon W. Mericle vs. A.S. Goldman &amp; Company, Inc., Stuart Winkler, et al

Arbitration # 99-02854

Page 5 of 5

Fee Summary

## 1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,687.50
Total Fees	= \$1,987.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 562.50

## 2. Respondent, A.S. Goldman &amp; Co., be and hereby is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$4,600.00

## 3. Respondents A.S. Goldman &amp; Co., Winkler and Marchiano, be and hereby are jointly and severally liable for:

Forum Fees	= \$1,687.50
Total Fees	= \$1,687.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$1,687.50

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

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Thomas F. Mahoney, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Larry Carlson, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Donald V. Anderson  
Non-Public Arbitrator

1-26-01  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD-DR office use only)