

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Scott K. Ginsburg, (Claimant) vs. Goldman, Sachs and Company (Respondent).

Case Number: 99-3041

Hearing Site: Dallas, Texas

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**REPRESENTATION OF PARTIES**

Claimant, Scott K. Ginsburg ("Claimant"): Joe Harrison, Esq., Robert L. Wright, Esq., and Elaine A. Murphy, Esq.: Gardere & Wynne, L.L.P., Dallas, Texas.

Respondent, Goldman, Sachs and Company ("Respondent"): Eric J.R. Nichols, Esq. and Ronald Secrest, Esq.: Beck, Redden & Secrest, Houston, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: July 2, 1999.

Claimant, Scott K. Ginsburg, signed the Uniform Submission Agreement: June 21, 1999.

Statement of Answer filed by Respondent, Goldman, Sachs and Company, on or about: September 9, 1999

Respondent, Goldman, Sachs and Company signed the Uniform Submission Agreement: September 1, 1999.

### CASE SUMMARY

Claimant Scott K. Ginsburg asserted the following causes of action: Respondent made unsuitable recommendations; Respondent made inadequate risk disclosures; Respondent breached its fiduciary duties; Respondent committed common law fraud and violated state and federal securities laws; Respondent was negligent; and Respondent failed to properly supervise its stockbroker, Charles McKinney. Claimant seeks recovery from Respondent for gains that he failed to realize in connection with transactions involving a significant block of Broadcast. com stock.

Unless specifically admitted in its Answer, Respondent Goldman, Sachs and Company denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant suffered no "legal wrong" as a result of any actions by Respondents and therefore, there are no legal "damages" to consider; Claimant failed to mitigate any alleged damages; and Claimant requests speculative damages.

### RELIEF REQUESTED

Claimant Scott K. Ginsburg requested:

Compensatory Damages	unspecified
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief:	unspecified

Respondent Goldman, Sachs and Company requested:

Interest	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief:	unspecified

### OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, counsel for Claimant made a Motion for a mistrial due to Respondent's failure to produce documents. The panel denied the Motion for a mistrial at the hearing, but took the Motion under advisement. The panel hereby finds that Respondent was dilatory in the discovery process in preparation for the arbitration of this matter.

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, and the post-hearing submissions, the Arbitration Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent Goldman, Sachs and Company is liable for and shall pay Claimant Scott K. Ginsburg compensatory damages in the amount of one dollar (\$1.00);
2. That Respondent Goldman, Sachs and Company is liable for and shall pay Claimant Scott K. Ginsburg punitive damages in the amount of one hundred eighty six thousand, three hundred seventeen dollars and fifty cents (\$186,317.50). In making this award of punitive damages, the panel has heard and considered the oral arguments of counsel during the hearing, the post-hearing submission, pleadings, and all documents submitted containing case and statutory authority, and find authority for this award of punitive damages;
3. That any and all relief requests not specifically awarded, other than forum fees which are addressed below, are hereby dismissed and denied.

### 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:

Initial claim filing fee	= \$250.00
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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 party.

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$2,000.00

#### 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$450.00	= \$900.00
Pre-hearing conferences: January 24, 2000	1 session
July 5, 2000	1 session
Thirteen (13) Hearing sessions x \$1000.00	= \$13,000.00
Hearing Dates: July 31, 2000	2 sessions
August 1, 2000	3 sessions
August 2, 2000	3 sessions
August 3, 2000	3 sessions
August 4, 2000	2 sessions
Total Forum Fees	= \$13,900.00

1. The Arbitration Panel has assessed \$6,950.00 of the forum fees to Claimant Scott K. Ginsburg.
2. The Arbitration Panel has assessed \$6,950.00 of the forum fees to Respondent Goldman Sachs and Company.

#### Fee Summary

1. Claimant, Scott K. Ginsburg, be and hereby is solely liable for:
 

Initial Filing Fee	= \$250.00
Forum fees	= \$6,950.00
Administrative Costs	= \$0
Total Fees	= \$7,200.00
Less payments	= \$6,250.00
Balance Due NASD Regulation, Inc.	= \$ 950.00
2. Respondent, Goldman Sachs and Company, be and hereby is solely liable for:
 

Forum Fee	= \$6,950.00
Member Fees	= \$3,800.00
Administrative Costs	= \$0
Total Fees	= \$10,750.00
Less payments	= \$ 9,400.00
Balance Due NASD Regulation, Inc.	= \$1,350.00

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signature

  
Anthony W. Kashouty  
Public Arbitrator, Presiding Chair

8/30/2000  
Signature Date

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David M. Seidner  
Industry Arbitrator

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Signature Date

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Roland D. Freeman  
Public Arbitrator

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

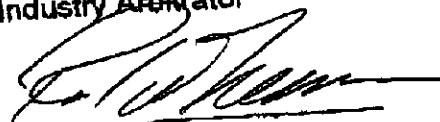
All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signature

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Anthony W. Kashouty  
Public Arbitrator, Presiding Chair

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Signature Date

\_\_\_\_\_  
David M. Seidner  
Industry Arbitrator



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Roland D. Freeman  
Public Arbitrator

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

8/3/00  
\_\_\_\_\_  
Signature Date

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signature

Anthony W. Kashouty  
Public Arbitrator, Presiding Chair

David M. Seidner  
Industry Arbitrator

Roland D. Freeman  
Public Arbitrator

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Signature Date

8-31-00  
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Signature Date

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Signature Date