

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

JS Capital Management, L.P.

93-01421

Name of Respondent

Pacific Brokerage Services, Inc.

REPRESENTATION

For Claimant: JS Capital Management, L.P. was represented by Jonathan Sherman of JS Capital Management, L.P.

For Respondent: Pacific Brokerage Services, Inc. was represented by Stephen P. Bedell, Esq. of Gardner, Carton & Douglas, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: April 8, 1993.

Claimant's Submission Agreement signed on: April 5, 1993 by Jonathan Sherman, JS Capital Management, L.P.

Statement of Answer filed by Respondent Pacific Brokerage Services, Inc. on: May 6, 1993.
Respondent Pacific Brokerage Services, Inc.'s Submission Agreement signed on: May 6, 1993 by James R. Kruger, Compliance Officer, Pacific Brokerage Services, Inc.

HEARING INFORMATION

Pre-Hearing Conference:	None Held.
Hearing Date/Sessions:	August 13, 1993 for One (1) session.
Hearing Location:	Chicago, Illinois.

CASE SUMMARY

Claimant JS Capital Management, L.P. ("JS Capital") alleged that Respondent Pacific Brokerage Services, Inc. ("Pacific") withheld a credit due its account because of an error in processing an order. JS Capital specifically alleged that:

1. On November 13, 1992, the JS Capital account at Pacific was short 900 shares of Elan PLC stock and long 600 shares of Elan Units, which were comprised of a warrant to purchase Elan stock and a share of a medical device research company called DRC Research. This position was suggested by an analyst at the Chicago Corporation;
2. At the open on November 16, 1992, the Elan Units separated into its components: one warrant and one share of DRC Research. JS Capital called the Chicago office of Pacific and requested that the three positions in Elan stock, DRC Research and Elan warrants be closed. The broker could not find the amount of warrants and advised that she would contact the Los Angeles office to determine the number of warrants owned by JS Capital. JS Capital advised again that the positions be closed when the number of warrants was determined;
3. Later the morning of November 16, the Chicago office called to confirm that JS Capital had sold 600 shares of DRC Research and 900 shares of Elan warrants, and purchased 900 shares of Elan PLC stock. JS Capital received an affirmative confirmation that it was out of all positions. Shortly thereafter, JS Capital received information that the Elan news release regarding the separation of the units may have been incorrect. JS Capital again called to request verification that it was out of all its positions and Pacific replied "yes";
4. On November 23, 1992, the Elan warrants split 3:2. On December 9, 1992, JS Capital received a trade confirmation in the mail that it had bought 450 shares of Elan warrants on December 4, 1992 to "cover a customer oversale"; and
5. On December 10, 1992, JS Capital called Pacific and spoke with a compliance officer to request a credit to its account in the sum of \$3,169.50. This request was denied.

Respondent Pacific denied the material allegation of the Statement of Claim, alleging that:

1. Pacific is a discount broker conducting all its business on an unsolicited basis. Jonathan Sherman ("Sherman"), General Partner of JS Capital, was a sophisticated investor with over nine years experience trading stocks, bonds and options;

2. On November 16, 1992, Sherman contacted the Chicago office of Pacific and requested information about the Elan PLC Units which had stopped trading on the American Stock Exchange because of a reorganization. Pacific referred to the Dow Jones News wire and advised Sherman that Elan had publicly announced that "effective Monday, November 16, 1992, each unit issued by Elan would separate into one share of Drug Research common stock and one and one-half Elan warrants." Pacific confirmed this information by contacting Elan's registered agent in the United States;
3. The information was conveyed to Sherman who then placed an order to sell 900 Elan warrants at the market. Later, Pacific discovered that the effective date of the separation of the warrants was actually November 23, 1992 and not November 16, 1992. Pacific purchased the 450 warrants which Sherman oversold because his sell order was placed prior to the effective date of the separation; and
4. Sherman relied on the announcement made by Elan and by the recommendation made by the Chicago Corporation's analyst, and Pacific is not responsible for the erroneous information released to the public.

RELIEF REQUESTED

Claimant JS Capital requested entry of an award against Respondent Pacific Brokerage for treble damages in the sum of \$9,508.50, plus interest on \$3,169.50 from December 4, 1992, and reimbursement of expenses generated because of this matter.

Respondent Pacific did not request any specific relief in the Statement of Answer, but requested that the claim be dismissed in its entirety at hearing.

OTHER ISSUES CONSIDERED & DECIDED

At hearing, Claimant JS Capital presented a Motion to Bar Defenses pursuant to Section 25(b)(2)(iii) of the NASD Code of Arbitration Procedure. In addition, Claimant presented a Motion for Sanctions pursuant to Resolution of the Board of Governors 3744 of the NASD Code of Arbitration Procedure. After hearing argument, the Arbitrator denied the Motion to Bar Defenses, but withheld decision on the remaining Motion pending the evidence produced during the hearing. After hearing all evidence, the Arbitrator has determined that the Motion shall be denied.

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

AWARD

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

1. The Statement of Claim is hereby dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) hearing session x \$200.00 per hearing session = \$200.00.

The National Association of Securities Dealers, Inc. shall retain the \$75.00 claim filing fee and refund \$100.00 of the \$200.00 hearing session deposit previously deposited by the Claimant, JS Capital Management, L.P. The NASD shall retain the remaining \$100.00 deposited by the Claimant. Respondent Pacific Brokerage Services, Inc. is liable for and shall pay to the NASD forum fees in the sum of \$100.00.

Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator's Signature

Name

Date

Ray J. Grzebielski, Esq.
Ray J. Grzebielski, Esq.

September 28, 1993

For NASD Use Only

Date of Service of Award:

September 29, 1993