

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

National Financial Services Corporation

Name of Respondents

Pacific Brokerage Services, Inc.	93-04282
Midland Walwyn Capital Corporation	
Fahnestock & Co., Inc.	
Cromwell Weedon & Co.	
Edward D. Jones & Co.	
Shearson Lehman Brothers, Inc.	
Cresvale International, Inc.	
Smith Barney Harris Upham & Co., Inc.	
Regional Clearing Corp.	
U.S. Clearing Corp.	
Chase Manhattan Bank, N.A.	

REPRESENTATION

For claimant National Financial Services Corporation ("NFSC") appeared Michael G. Shannon, Esq. of the law firm of Phillips, Lytle, Hitchcock, Blaine & Huber located in New York, New York.

For respondents Pacific Brokerage Services, Inc. ("Pacific") and Edward D. Jones & Co. (Jones) appeared Stephen P. Bedell, Esq. of the law firm of Gardner, Carton & Douglas located in Chicago, Illinois.

For respondent Midland Walwyn Capital Corporation ("Midland") appeared Stewart Smith, Esq., Associate Counsel of Midland Walwyn Capital, Inc.

For respondent Fahnestock & Co., Inc. ("Fahnestock") appeared Charles E. Padgett, Esq., Senior Vice President and General Counsel of Fahnestock & Co., Inc.

Respondent Cromwell Weedon & Co. ("Cromwell") did not enter an appearance in this matter.

For respondent Shearson Lehman Brothers, Inc. ("Shearson") appeared William A. Olshan, Esq., Vice President of Lehman Brothers Inc.

For respondent Cresvale International, Inc. ("Cresvale") appeared Michael McDermott, Chief Executive Officer of Cresvale International Inc.

For respondent Smith Barney Harris Upham & Co., Inc. ("Smith Barney") appeared Edward N. Gioiella, Esq., First Vice President and Associate General Counsel of Smith Barney Shearson Inc.

For respondent Gruntal & Co., Incorporated ("Gruntal"), as successor in interest to respondent Regional Clearing Corp. ("Regional") appeared Harry D. Frisch, Esq., Assistant General Counsel of Gruntal & Co., Incorporated.

For U.S. Clearing Corp. ("U.S. Clearing") appeared Kathy J. Abate, Esq., of U.S. Clearing Corp.

For respondent Chase Manhattan Bank, N.A. ("Chase") appeared Matthew G. Leonard, Esq., Vice President and Senior Associate Counsel of Chase Manhattan Bank, N.A.

CASE INFORMATION

NFSC's Statement of Claim was filed on October 14, 1993. NFSC's Submission Agreement was signed on October 1, 1993.

Pacific's Statement of Answer was filed on March 22, 1996. Pacific's Submission Agreement was signed on March 20, 1996.

Midland's Statement of Answer was filed on June 24, 1994. Midland did not file an executed Submission Agreement.

Fahnestock's Statement of Answer was filed on April 18, 1994. Fahnestock's Submission Agreement was signed on April 18, 1994.

Cromwell did not file a Statement of Answer or Submission Agreement in this matter.

Jones & Co's Statement of Answer was filed on March 25, 1994. Jones & Co's Submission Agreement was signed on March 22, 1994.

Cresvale did not file a Statement of Answer or Submission Agreement in this matter.

Shearson's and Smith Barney's Joint Statement of Answer was filed on March 25, 1994. Shearson and Smith Barney did not file properly executed Submission Agreements

Gruntal's Statement of Answer was filed on March 25, 1994. Gruntal's Submission Agreement was signed on March 25, 1994.

U.S. Clearing's Statement of Answer was filed on April 11, 1994. U.S. Clearing's Submission Agreement was signed on April 7, 1994.

Chase's Statement of Answer was filed on January 18, 1994. Chase's Submission Agreement was signed on January 18, 1994.

NFSC's Reply to Counterclaims of Chase was filed on November 9, 1994.

HEARING INFORMATION

Pre-hearing conference:	February 21, 1996	-	Panel
	April 22, 1996	-	One Arbitrator
	June 7, 1996	-	Panel
Hearing Sessions/Dates:	January 15, 1997	-	Two Sessions
	January 16, 1997	-	Two Sessions
	January 17, 1997	-	Two Sessions

The hearings were held at the Club Quarters Hotel located at 52 William Street, New York, New York.

CASE SUMMARY

Claimant alleged that respondents failed to deliver to NFSC certain split dividend shares of Philippine Long Distance ("PLD") stock and cash dividends which became due and payable at various times since October 20, 1987 and rights to additional stock and cash dividends which were expected to continue to be declared due and payable. NFSC also alleged that the controversy arose out of the assertion by Chase that, as the transferee of certain PLD shares from NFSC, Chase was entitled to the split and dividend shares at issue. NFSC maintained that Chase's claim arose out its purchase of 20,000 shares of PLD from NFSC which entitled the record owners as of September 15, 1987 to certain splits and dividends.

NFSC alleged that, upon notification of Chase's claim in 1992, it conducted an investigation and determined that it had not received any of the split or dividend shares or cash dividends from twenty five broker/dealers or clearing agents from whom it had purchased the PLD stock. NFSC further alleged that it made written demands upon the broker/dealers and clearing agents for delivery, but that the respondents each failed to deliver some or all of the shares and cash dividends due from each of them.

Pacific denied the allegations of wrongdoing in the Statement of Claim and, as affirmative defenses, maintained that NFSC's claims were barred because of lack of jurisdiction, by the applicable statutes of limitations and by the doctrines of laches, estoppel, waiver, ratification, acquiescence and unclean hands. Pacific further maintained that NFSC failed to mitigate any alleged damages and that the claims were barred by the assumption of the risk with respect to NFSC's failure to obtain due bills for the shares, splits and dividends and by NFSC's own negligence. Pacific also contended that NFSC violated applicable statutes, rules and regulations of the SEC and industry customs and practices and that NFSC should not be allowed to profit therefrom or otherwise seek recovery against any of the respondents therefor.

Midland maintained that it had no trading activity relevant to NFSC's claim. Midland further maintained that, after an extensive search, it found that Midland Doherty Ltd., the predecessor company of Midland's holding company, Midland Walwyn Capital Inc., carried out the trades of PLD with NFSC. Midland further maintained that copies of the settlement reports evidence that all of the relevant trades were settled.

Fahnestock maintained that the actions complained of by NFSC occurred more than six years prior to the Statement of Claim and, therefore, were barred by Rule 10304 (formerly Section 15) of the Code of Arbitration Procedure.

Jones maintained that the NASD lacked jurisdiction over this matter due to the passage of time. Jones also asserted the following affirmative defenses: (1) applicable statutes of limitation, (2) laches, (3) failure to mitigate, (4) estoppel, (5) ratification, (6) acquiescence, and (7) unclean hands.

Shearson and Smith Barney maintained that, as to the allegations concerning Shearson, no privity of contract existed between Shearson and NFSC, but that instead NFSC obtained certain shares of PLD from Morgan Stanley which were registered in Shearson's name. Shearson and Smith Barney further maintained that they are unable to locate records which would establish whether the shares and the dividends in issue were received by Shearson and, if so, whether Shearson paid the dividends in issue to Morgan Stanley or someone else.

Shearson and Smith Barney maintained that, as to the allegations concerning Smith Barney, the shares in issue were held by Citibank and therefore all stock splits and cash dividends would have been paid to Citibank. Shearson and Smith Barney also maintained that, upon information and belief, the split shares and dividend shares paid to Citibank were escheated to the State of New York and therefore, NFSC would be entitled only to the shares escheated or the proceeds of the sale of those shares.

Gruntal, as successor in interest to Regional, maintained that the Statement of Claim failed to state a claim upon which relief may be granted and that the claims were barred by the applicable statutes of limitations, by the doctrine of laches and by Rule 10304 of the Code.

US. Clearing maintained that it was willing to settle this claim by assigning to NFSC beneficial ownership in the securities and funds which were dutifully turned over to the State of New York pursuant to regulations regarding escheat property. U.S. Clearing further maintained that because of the extensive delay in NFSC claiming the dividend, NFSC was entitled to no more than what was recoverable from the State of New York.

In its counterclaim, Chase alleged that, acting as custodian and not principal, it contracted to receive 20,000 shares of PLD stock from NFSC. Chase further alleged that, pursuant to the contracts between Chase and NFSC, custom and practice and industry regulation, these 20,000 shares entitled Chase's customer, as beneficial owner as of September 15, 1987, to a 2 x 1 split resulting in 20,000 additional shares, a 20% stock dividend resulting in 8,000 more shares, a 15% stock dividend resulting in an additional 4,200 shares, for a total of 32,200 shares of PLD stock, plus any future stock splits or dividends relating to these shares. Chase also alleged that

the shares entitled Chase, as custodian for the beneficial owner, to cash dividends payable in an amount that totaled \$21,313.71 as of November 30, 1993 and to any future cash dividends declared relating to the 32,200 shares. Chase contended that, despite its demand, NFSC failed and refused to deliver the additional stock and cash dividends.

RELIEF REQUESTED

NFSC requested an award as follows:

- a. against each of the respondents for the following shares and cash amounts:
 - i. against Pacific in the amount of 4,669 shares and accrued cash dividends of \$3,181.28
 - ii. against Midland in the amount in the amount of 6,923 and accrued cash dividends of \$5110.21;
 - iii. against Fahnstock in the amount of 230 shares and accrued cash dividends of \$163.83;
 - iv. against Cromwell in the amount of 46 shares and accrues cash dividends of \$34.16;
 - v. against Jones in the amount of 161 shares and accrued cash dividends of \$118.93;
 - vi. against Shearson in the amount of 1,610 shares and accrued cash dividends of \$1,208.13;
 - vii. against Cresvale in the amount of 348 shares and accrued cash dividends of \$109.91
 - viii. against Smith Barney in the amount of 540 shares and accrued cash dividends of \$389.28;
 - ix. against Regional in the amount of 322 shares and accrued cash dividends of \$239.73;
 - x. against U.S. Clearing in the amount of 161 shares and accrued cash dividends of \$119.82.
- b. against each of the respondents for the delivery of any and all necessary documents to ensure proper receipt of any subsequent dividends and rights in he shares;
- c. imposing a trust on all such shares and dividends heretofore received by

respondents and not delivered to NFSC and requiring them to account for them;

- d. requiring the respondents to indemnify NFSC proportionately for any liabilities or obligations NFSC may have to Chase for the non-delivery of said shares or cash dividends;
- e. awarding NFSC a declaration limiting its liability, if any, to Chase to the quantity of PLD shares and the amount of cash NFSC shall actually obtain on its corresponding claims against the contra brokers from whom NFSC purchased the PLD shares; and
- f. awarding NFSC interest, forum costs and reasonable attorneys fees.

Pacific requested an award denying the relief requested by NFSC, dismissing the Statement of claim and granting Pacific such other and further relief as the arbitrators deem just and equitable.

Midland requested that NFSC's claims against it be dismissed in their entirety and that it be awarded its costs and expenses in defending this proceeding.

Shearson requested that the claim be denied in its entirety as it was time barred and due to NFSC's failure to make a request for the shares in issue within a reasonable date of the underlying distribution.

Smith Barney requested that its liability be limited to the shares of PLD, or the proceeds of said shares which have been escheated to the State of New York by Citibank and that claimant be required to file the necessary papers to obtain payment from the state.

Gruntal requested that the claims against it be dismissed in their entirety and that it be awarded its costs and expenses in defending this proceeding.

U.S. Clearing requested that it be awarded its costs and expenses associated with this proceeding.

Chase requested an award against NFSC:

- (a) dismissing NFSC's claim against Chase in its entirety; and on Chase's counterclaims;
- (b) for the PLD shares and cash amounts claimed;
- (c) directing NFSC to turn over to Chase immediately any PLD shares and cash dividends it has recovered from broker/dealers on Chase's behalf;
- (d) imposing a trust on all shares and dividends heretofore received by NFSC and not delivered to Chase and requiring NFSC to account for those shares;

- (e) for delivery of any and all necessary documents to ensure proper receipt of any subsequent dividends and rights in the shares;
- (f) requiring NFSC to indemnify Chase for any liabilities or obligations Chase may have to third parties for non-delivery of said PLD shares or cash dividends; and
- (g) requiring NFSC to pay Chase interest, forum costs and reasonable attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearings in this matter, NFSC advised NASD Regulation that it had reached settlements with Midland, Fahnestock, Shearson, Cresvale, Smith Barney, Regional, U.S. Clearing and Chase and, therefore, no representatives appeared at the hearings on behalf of these respondents.

The panel made the following determinations as to respondent Cromwell, who did not file a Statement of Answer or a Submission Agreement and did not appear at the hearing in this matter:

1. Pursuant to Rule 10101 (formerly Section 1) of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Cromwell was a member of the NASD at the time this controversy arose and, consequently, the panel found personal jurisdiction over Cromwell pursuant to Rule 10201 (formerly Section 8) of the Code.
3. The panel found that Cromwell was required to file with the NASD a Statement of Answer and a properly executed Submission Agreement pursuant to Rule 103114(b) (formerly Section 25(b)) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Cromwell pursuant to Rule 10314(a) (formerly Section 25(a)) of the Code.
4. In addition, in accordance with Rules 10310, 10315 and 10318 (formerly Sections 21, 26 and 29) of the Code, the panel found that the NASD provided Cromwell with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel determined to proceed with the hearing without Cromwell, whose absence was unexcused.

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 originals remain on file with NASD Regulation, Inc.

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. On NFSC's first cause of action, Cromwell is hereby liable and shall transfer to NFSC 46 shares of PLD and shall pay NFSC accrued interest in the amount of \$34.16. NFSC's second through seventh causes of action are hereby dismissed as to Cromwell.
2. On NFSC's first cause of action, Jones is hereby liable and shall transfer to NFSC 161 shares of PLD and shall pay NFSC accrued interest in the amount of \$118.93. NFSC's second through seventh causes of action are hereby dismissed as to Jones.
3. On NFSC's second cause of action, Pacific is hereby liable and shall pay NFSC the sum of \$40,600.00, interest specifically excluded. NFSC's first and third through seventh causes of action are hereby dismissed as to Pacific.
4. Claimant's request for attorney's fees is hereby denied.
5. The parties shall bear their respective costs.
6. All other claims are hereby denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 filing fee paid by NFSC and the \$500.00 the filing fee paid by Chase and have assessed the following forum fees:

1 pre-hearing conference (one arbitrator)	= \$ 300.00
2 pre-hearing conferences (panel) x \$600.00	= \$1,200.00
6 hearing sessions x \$600.00	= <u>\$3,600.00</u>
Total forum fees assessed	= \$5,100.00

1. Claimant be and hereby is liable for the sum of \$3,400.00, representing two-thirds of the total amount of forum fees assessed. Claimant previously deposited \$600.00 and, therefore, claimant is liable and shall pay \$2,800.00 to NASD Regulation.
2. Respondents Pacific, Jones and Cromwell be and hereby are jointly and severally liable and shall pay to NASD Regulation the sum of \$1,700.00, representing one-third of the total amount of forum fees assessed.

Fees are payable to the NASD Regulation, Inc.

Arbitrators' Signatures



Richard S. Peskin, Esq.
Chairperson-Industry Arbitrator

John J. O'Neill, Esq.
Industry Arbitrator

James R. Madan
Industry Arbitrator

Date of decision: March 18, 1997

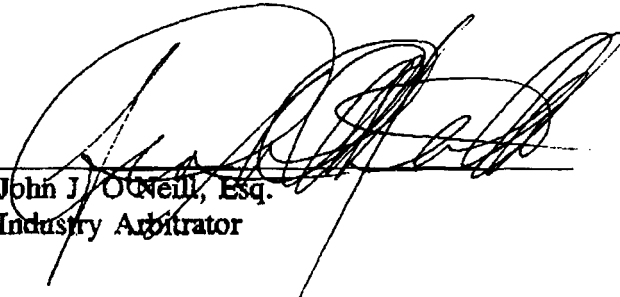
I, Richard S. Peskin, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Richard S. Peskin, Esq.

Arbitrators' Signatures

Richard S. Peskin, Esq.
Chairperson-Industry Arbitrator



John J. O'Neill, Esq.
Industry Arbitrator

James R. Madan
Industry Arbitrator

Date of decision: March 18, 1997

I, John J. O'Neill, Esq., 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.



John J. O'Neill, Esq.

Arbitrators' Signatures

Richard S. Peskin, Esq.
Chairperson-Industry Arbitrator

John J. O'Neill, Esq.
Industry Arbitrator



James R. Madan
Industry Arbitrator

Date of decision: March 18, 1997

I, **James R. Madan**, 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.



James R. Madan