

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Rueben Barnett

93-04672

Name of Respondents

La Jolla Securities, Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 8, 1993, Claimant Rueben Barnett, who appeared Pro Se, alleged that he purchased 10,000 shares of LTV Class C Preferred Stock through Respondent on June 2, 1993. Claimant further alleged that he was not advised by Respondent or its broker that the agreement made to end the LTV bankruptcy was approved by the courts as of May 27, 1993, nor that this agreement included a provision for the replacement of outstanding shares of preferred stock with warrants at the rate of 1 warrant for each 100 shares of preferred stock. Claimant contended that he relied on his broker at Respondent to advise him with regard to these matters, and Respondent failed to so advise him. Claimant further contended that his intent as expressed to the broker at Respondent was to obtain and hold a long-term equity interest in the LTV corporation, and that had he been aware of these facts he would not have made the purchase. Claimant alleged that his 10,000 shares of LTV Preferred Stock were converted to 100 warrants on June 30, 1993, causing great loss to Claimant. Claimant further alleged that due to the above, the Respondent should be held liable in this matter.

Respondent La Jolla Securities, Inc., through its out-of-house counsel, Nicholas F. Coscia, Esq., of Dennis & Coscia, San Diego, California, maintained that since Claimant's account with Respondent was non-discretionary, Respondent was only obligated to act upon Claimant's instructions, which were to buy 10,000 shares of LTV. Respondent further maintained that since the order of Claimant was unsolicited, it had no affirmative duty to advise the Claimant as to the

wisdom of such investment decision. Respondent contended that since it did not have a pattern of communication with Claimant regarding his portfolio, it was under no continuing duty to inform Claimant of the status of his investment. As a result of the above, Respondent maintained that it should not be held liable in this matter.

**RELIEF REQUESTED**

Claimant Rueben Barnett requested \$5,737.50 in actual damages.

Respondent La Jolla Securities Inc. requested that Claimant's Statement of Claim be dismissed in its entirety, and costs be assessed against Claimant.

**AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Arch B. Gilbert, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 15, 1993 and by the Respondent on January 31, 1994.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Claimant Rueben Barnett's claims against Respondent La Jolla Securities Incorporated are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

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**AFFIRMATION**

I, **ARCH B. GILBERT, ESQ.**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, reading "Arch B. Gilbert", written over a horizontal line.

Signature of Arbitrator

**DATE OF DECISION:**      June 27, 1994