

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Robert W. Hyatt

94-00893

Name of Respondents

LaJolla Capital Corp.  
Emmett A. Larkin & Co., Inc.

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on March 9, 1994, Claimant Robert W. Hyatt, who appeared Pro Se, alleged that his broker at Respondent LaJolla Capital Corp. ("LaJolla") failed to close his account. Claimant further alleged that his broker at Respondent LaJolla failed to send him all of his funds in the account, as evidenced by his November 26, 1993 statement. Claimant further alleged that he called and wrote Respondent LaJolla and Respondent Emmett A. Larkin & Co., Inc. ("Larkin") for an explanation, but never received a response. Claimant further alleged that his broker at Respondent LaJolla purchased shares of KLH Engineering Group Inc. stock for his account without his authorization, and failed to sell this stock upon Claimant's request. As a result of the above, Claimant contended that he has suffered damages for which the Respondents should be held liable.

Respondent LaJolla Capital Corp., through its in-house counsel James C. Weaver, Esq., San Diego, California, maintained that the difference between the November indicated market value in Claimant's account and the proceeds actually realized a month later was \$1,242.50, due to market fluctuation and the differences between the Bid and Ask price. Respondent denied that its broker purchased shares of KLH Engineering Group, Inc. stock for Claimant's account without his authorization or failed to sell this stock upon Claimant's request. As a result of the above, Respondent contended that it should not be held liable in this matter.

Respondent Emmitt A. Larkin & Co., Inc., through its representative Melvin L. Peterson, maintained that in its capacity as the clearing broker it is only aware of transactions after they have occurred. As a result of the above, Respondent contended that it should not be held liable in this matter.

### **RELIEF REQUESTED**

Claimant Robert W. Hyatt requested \$1,242.50 in actual damages.

Respondent LaJolla Capital Corp. requested that the Claimant's Statement of Claim be dismissed in its entirety., and that costs and attorney's fees be assessed against the Claimant.

Respondent Emmett A. Larkin & Co., Inc. requested that the Claimant's Statement of Claim be dismissed in its entirety, and that costs be assessed against the Claimant.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Edmund L. Epstein, 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 March 1, 1994, by Respondent La Jolla Capital Corp. on May 4, 1994, and by Respondent Emmett A. Larkin & Co., Inc. on May 2, 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. The claims of Claimant Robert W. Hyatt against Respondents La Jolla Capital Corp. and Emmett A Larkin & Co., Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent La Jolla Capital Corp. is liable and shall pay to Claimant Robert W. Hyatt \$25.00 as partial reimbursement of the filing fee.

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**AFFIRMATION**

I, **EDMUND L. EPSTEIN, 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.

  
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Signature of Arbitrator

**DATE OF DECISION:** March 6, 1995