

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Irving and Marilyn Golombeck

95-00639

Name of Respondents

Alex V. Folgen
La Jolla Capital Corporation

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 8, 1995, Claimants Irving and Marilyn Golombeck ("Claimants"), who appeared Pro Se, alleged that Respondents Alex V. Folgen ("Folgen"), and La Jolla Capital Corporation ("LJC"), successfully solicited their business by making misleading statements regarding Jutland Enterprises ("JT") via a telephone call. Claimants further alleged that they purchased 500 shares of JT to their detriment. Claimants contended that after this transaction, LJC informed him that Folgen was not a licensed broker even though he had represented himself as such and, therefore, Claimants believe LJC had not adequately investigated his qualifications to sell securities. Claimants further contended that TDA and JT were unsuitable for them and that they had disclosed their investor profile during the first conversation with Folgen and that as a result of the above, they have suffered a loss for which the Respondents should be held liable.

Respondent La Jolla Capital Corporation, through its representative and in-house counsel, James C. Weaver, Esq., located in La Jolla, CA, maintained that the Claimants purchased shares in TDA and JT, but only after they requested and received information regarding both securities. Respondent further maintained that the Claimants understood and accepted the risks of investing in stocks. Respondent contended that it never represented to Claimants that Folgen was unlicensed and, in fact, is licensed to sell securities. Respondent further contended that as a result of the above, it should not be held liable.

Respondent Alex V. Folgen, did not file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimants Irving and Marilyn Golombeck, requested \$5,500.00 in actual damages, plus punitive damages and costs.

Respondent La Jolla Capital Corporation, requested that the claims of the Claimants be dismissed.

Respondent Alex V. Folgen, did not file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

In accordance with Section 10 of the NASD Code of Arbitration Procedure Respondent Alex V. Folgen, was served by regular mail and given an opportunity to respond, which he failed to do. Service of notification of the arbitrator's identity was sent certified mail neither the signature card nor the package were returned.

Pursuant to the By-laws of the NASD the arbitrator determined that Respondent Alex V. Folgen, had notice of the claim and was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

The arbitrator, after having considered the documents submitted by the parties concerning Respondent La Jolla Capital Corporation's, Motion to "object to the inclusion of an apparent settlement proposal" denied the Motion.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator Edwin P. Brooks, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Irving and Marilyn Golombeck, on February 6, 1995, and by the Respondent La Jolla Capital Corporation, on March 10, 1995, but not by Respondent Alex V. Folgen, as required by Sections 8 and 10 of the NASD Code of Arbitration Procedure.

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 Respondents La Jolla Capital Corporation and Alex V. Folgen, are jointly and severally liable and shall pay to the Claimants Irving and Marilyn Golombeck, \$2,000.00 in actual damages.

2. The parties shall bear their respective costs.
3. All other relief requests are denied.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Irving and Marilyn Golombeck, shall be retained by the NASD, Inc. The Respondents La Jolla Capital Corporation and Alex V. Folgen, are jointly and severally liable and shall pay to the Claimants Irving and Marilyn Golombeck, \$75.00 reimbursement of on-half of the filing fee.

AFFIRMATION

I, EDWIN P. BROOKS, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Edwin P. Brooks

DATE OF DECISION: October 3, 1995