

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Larry A. Berman

95-00897

Name of Respondent(s)

La Jolla Capital Corp.
B. J. Gallison
Alex Folgen

REPRESENTATION

Claimant Larry A. Berman ("Claimant") appeared *pro se*

Respondents La Jolla Capital Corp. ("La Jolla") and B. J. Gallison ("Gallison") were represented by James C. Weaver, Esq., La Jolla, CA

Respondent Alex Folgen ("Folgen") did not appear

CASE INFORMATION

The State of Claim was filed February 21, 1995
Claimant's Submission Agreement was signed February 18, 1995
Claimant's Revised Submission Agreement was signed March 8, 1996

La Jolla's and Gallison's (collectively "Respondents") Joint Statement of Answer was filed May 19, 1995
La Jolla's Submission Agreement was signed May 18, 1995
Gallison's Submission Agreement was signed May 18, 1995

Folgen did not file an answer nor did he submit a Uniform Submission Agreement

HEARING INFORMATION

Hearing Date/Sessions: March 18, 1996/two sessions

Hearing Location: Doubletree Hotel
Philadelphia, PA

CASE SUMMARY

Claimant alleged, among other things, that Folgen, employed as a registered representative by Respondents, induced Claimant to purchase 1200 shares of Jutland Enterprises, Inc. ("JUTL"). Claimant alleged that he opened an account with La Jolla when Claimant's account executive transferred to La Jolla from J.

Gregory. Claimant alleged that after he opened an account at La Jolla, Folgen began to solicit trades as Claimant's account executive. Claimant alleged that Folgen made material misrepresentations about JUTL and the future of the securities. Claimant alleged that Folgen misrepresented that JUTL was a chain of coffee shops and JUTL would be receiving a large infusion of capital. Claimant alleged that Folgen omitted telling Claimant that JUTL was a startup operation with virtually no revenues. Claimant alleged that Folgen pressured Claimant into purchasing 650 shares of JUTL at \$10 7/8 in November 1993. Claimant alleged that Folgen kept insisting that the securities were moving quickly and persuaded Claimant to purchase an addition 550 shares at \$13.00 in January 1994. Claimant alleged that Respondents failed to provide any prospectus or written information on JUTL, nor was Claimant told the bid and ask price of JUTL. Claimant alleged that when he requested information as to why JUTL had dropped to \$6 per share in a very short period of time, Folgen fraudulently misrepresented that the price decline was due to a large amount of warrants which were exercised. Claimant alleged that as the shares continued to decline in value, Folgen refused to return any of Claimant's telephone calls and then La Jolla closed the New York City office. Claimant alleged that when he spoke directly with La Jolla that Gallison, as President of La Jolla, told Claimant that he had purchased a bad stock. Claimant alleged that Gallison told Claimant that JUTL was a La Jolla stock and that the shares Claimant purchased came from California brokers. Claimant alleged that Respondents failed to properly supervise Folgen and that the actions of Folgen and Respondents caused Claimant to suffer damages.

Respondents La Jolla and Gallison deny all allegations of wrong doing. Respondents maintained that Claimant was an sophisticated investor with approximately ten years experienced in the securities market. Respondents maintained that Claimant had sufficient contacts with Folgen to ascertain the risks and possible rewards of JUTL. Respondents maintained that the closing of La Jolla's New York City office had no relationship to the rapid decrease in value of JUTL. Respondents maintained that Folgen left La Jolla to work for another firm. Respondents maintained that Folgen was properly supervised at all times. Respondents maintained that Gallison did not tell Claimant that JUTL was a La Jolla stock and that the shares Claimant purchased came from California brokers. Respondents maintained that as far as Respondents were aware, there was not any impropriety in the trading of the JUTL shares. Respondents maintained that the JUTL shares purchased by Claimant were brought from the market and La Jolla did not have any proprietary interest in the shares. Respondents maintained that any losses suffered by Claimant were the result of Claimant's own decisions and market conditions.

Folgen did not file any response.

RELIEF REQUESTED

Claimant requested relief in the amount of \$15,600.00 as well as punitive damages in the amount of \$31,200.00.

Respondents requested that the Statement of Claim be denied and that the costs of arbitration be assessed to Claimant.

Folgen did not request any relief.

OTHER ISSUES CONSIDERED & DECIDED

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 the NASD.

After consideration of Claimant's request to submit post-hearing documents to the record and Respondents' objections thereto, the panel denied the request.

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. That Respondents are jointly and severally liable to and shall pay to Claimant \$11,000.00 exclusive of interest.
2. That Claimant's request for punitive damages is denied.
3. That each party shall pay its own costs and expenses.
4. That any relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions x \$400.00 = \$800.00

Forum Fees are assessed jointly and severally against Respondents and Folgen. Respondents and Folgen are jointly and severally liable and shall reimburse Claimant the \$400.00 hearing session deposit he submitted to the NASD, leaving a net assessment to the NASD of \$400.00.

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

Date

Concurring Arbitrators' Signatures

3/29/96



Guillermo L. Bosch, Presiding
Public Arbitrator

James J. McCann
Public Arbitrator

Carl T. Necker, Sr.
Industry Arbitrator

Date Decision Served by NASD: April 22, 1996

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

Date

Concurring Arbitrators' Signatures

Guillermo L. Bosch, Presiding
Public Arbitrator

4/13/96

James J. McCann

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Public Arbitrator

Carl T. Necker, Sr.
Industry Arbitrator

Date Decision Served by NASD: April 22, 1996

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

Date

Concurring Arbitrators' Signatures

Guillermo L. Bosch, Presiding
Public Arbitrator

James J. McCann
Public Arbitrator

3/30/96

Carl T. Necker, Sr.
Carl T. Necker, Sr.
Industry Arbitrator

Date Decision Served by NASD: April 22, 1996