

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Judith A. Lifson and Kalman A. Lifson

95-03812

Name of Respondent

Donaldson Lufkin & Jenrette Securities

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 8, 1995, claimants Judith A. Lifson and Kalman A. Lifson, through their representative and counsel, S. Grant Dorfman, Esq., of the law firm Susman Godfrey, L.L.P., located in Houston, Texas alleged that on July 22, 1993, respondent Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ") executed a trade in their account for 1,500 shares of PetsMart, Inc., at the initial offering price of \$18 per share. Claimants further alleged that contemporaneously with the trade, Lifsons' account was debited \$27,000.00. Claimants also alleged that two weeks after the purchase, PetsMart stock appreciated almost 100% in value.

Claimants contended that sometime after August 4, but on or before August 16, claimants received a confirmation slip from DLJ purporting to cancel 500 shares of PetsMart stock. Claimants further contended that the slip indicated that the cancellation was processed on August 4, 1993. Claimants also contended that DLJ disbursed \$9,000.00 into their account reflecting the IPO price for cancellation of Mrs. Lifson's purchase of 500 shares, while the trading price for the stock as of August 19, 1993 was approximately \$30 per share. Claimant Judith Lifson asserted that upon receiving the canceled trade, she spoke with DLJ Senior Vice President protesting that she had not received notice of the canceled trade until more than two weeks had passed. Claimant further asserted that DLJ Vice President claimed the canceled trade was made to correct DLJ's error in placing 500 of the 1500 shares into their account. Claimant also asserted that DLJ Vice President advised her to contact PetsMart, since he explained the DLJ was merely acting as an agent in this transaction and had nothing to do with the actual allotment of stock.

Claimant alleged that on or about September 28, 1993, she spoke by phone with a DLJ account representative Michael Rovens instructing him to sell all 1,500 shares of the stock, at a price of \$34 per share or better. Claimant further alleged that Mr. Rovens refused to carry out her order, and instead informed her that he would have to short 500 shares of the stock in order to execute for the account the requested 1,500 share sell order. Claimant also alleged that on October 1, 1993, DLJ sold 1,000 share for the account at \$35 per share. Claimants contended that as a result of DLJ's action, DLJ breached their contract and fiduciary duty to claimants.

Respondent Donaldson, Lufkin & Jenrette Securities Corporation (referred to as "DLJ" or "respondent") through its representative and compliance counsel, Sarah Kreisman, Esq., maintained that claimants Statement of Claim failed to assert a legal and factual basis for their claim. Respondent further maintained that PetsMart provided DLJ with a list known as "friends and family" of the individuals who were to receive a fixed number of shares at a lower price than paid by the public. Respondent also maintained that PetsMart allotted a maximum of 500 shares per family, but, because of the claimants' son-in-law, being an officer with the company, they were allotted 1,000 shares. Respondent contended that claimants were contacted by DLJ, informing them that they would be allowed to purchase a maximum of 1,000 shares.

Respondent further contended that on July 22, 1993, DLJ reviewed the allotments and noted that there was an over-distribution of shares in the claimants' account. Respondent also contended that as a result of the over-distribution, DLJ canceled that portion of the transaction (500 shares) to which claimants were not entitled. Respondent maintained that on or about August 4, 1993, DLJ received a check for \$18,000.00 as payment for the agreed upon amount of 1,000 shares at \$18.00 per share. Respondent further maintained that on August 13, 1993, DLJ received Federal Funds for claimants account in the amount of \$9,000.00 for deposit into the account. Respondent also maintained that because there was no debit in the account, the net credit balance of the account was increased by \$9,000.00. Respondent contended that in the following weeks, claimant contact DLJ in an attempt to obtain 500 additional shares, but claimants were informed that DLJ had no discretion regarding the initial allotment of shares. Respondent further contended that they instructed claimants to contact PetsMart and based upon respondents information and beliefs, but claimants never contacted Petsmart.

Respondent also maintained that on or about September 28, 1993, claimants contact DLJ to sell 1,500 shares of PetsMart, respondent informed claimants that the account only contained 1,000 shares. Respondent contended that there cannot be a meeting of the minds sufficient to form the basis for a contract where mistake of fact or law exists. Respondent denied that it breached any contractual, fiduciary or other duty to claimants.

RELIEF REQUESTED

Claimants Judith A. Lifson and Kalman A. Lifson, requested \$8,500.00 in actual damages, plus interest, and attorneys' fees.

Respondent Donaldson, Lufkin & Jenrette Securities Corporation, requested that claimant's Statement of Claim be dismissed.

AWARD

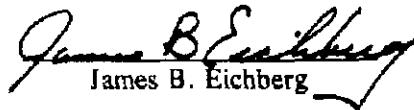
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, James B. Eichberg, was selected to review the matter in controversy between the parties set for the in submissions to Arbitration signed by the claimants Judith A. and Kalman A. Lifson on August 3, 1995, and signed by the respondent Donaldson, Lufkin and Jenrette Securities Corporation on December 4, 1995.

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 the Claimant Judith A. and Kalman A. Lifson against respondent Donaldson, Lufkin and Jenrette Securities Corporation are dismissed in their entirety.
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 shall be retained by the NASD, Inc.

AFFIRMATION

I, **JAMES B. EICHBERG**, do swear or affirm upon my oath as arbitrator, that I am the individual described herein, and who executed this instrument which is my oath and award.


James B. Eichberg

Date of Decision: July 16, 1996