

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Joseph P. Smith and Lorraine Durnane

95-05265

Name of Respondent

J.B. Oxford & Company

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on November 7, 1995, claimants Joseph P. Smith and Lorraine Durnane ("claimants"), who appeared Pro Se, alleged that respondent J.B. Oxford & Company ("respondent") failed to execute a sell order. Claimants further alleged that upon transferring their Santa Cruz Operation ("SCO") shares to respondent, they informed their broker, Jack Li ("Li"), to sell the 2,000 shares at the minimum price of \$10 5/16 per share. Claimants also alleged that on September 19, 1995, the SCO traded as high as \$12 1/8 per share but that it was not sold as instructed. Claimants also alleged that as a result of the above, they have suffered a loss for which the respondent should be held liable.

Respondent J.B. Oxford & Company through its representative and in-house counsel, Scott G. Monson, Esq., maintained that it is a deep-discount brokerage firm and that claimants opened an account with it in June of 1995. Respondent further maintained that claimants deposited cash and transferred in a variety of securities including SCO. Respondent also maintained that claimant Smith discussed with Li that his average price for the purchases of SCO was \$10 5/16 but that no discussions concerning selling the security were held. Respondent contended that after the close on September 19, 1995, Smith called to inquire about the sale of SCO and was informed by Li that no sale had taken place because no sell order had been received. Respondent further contended that Smith requested that 1,000 of the 2,000 shares be sold the next day at a limit of \$9 1/2 which was followed. Respondent also contended that claimants later complained and that it should not be held liable.

**RELIEF REQUESTED**

Claimants Joseph P. Smith and Lorraine Durnane requested \$9,187.50 in actual damages.

Respondent J.B. Oxford & Company requested that the claims be dismissed in their entirety.

**AWARD**

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Gary M. Landau, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimants on November 2, 1995, and by respondent on May 13, 1996.

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 claimants Joseph P. Smith and Lorraine Durnane against respondent J.B. Oxford & Company are denied in their entirety.
2. The parties shall bear their respective costs.
3. The filing fee is \$150.00. The \$125.00 portion of the filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the claimants shall be retained by the NASD, Inc. Respondent J.B. Oxford & Company is liable and shall pay \$75 as reimbursement of one-half of the filing fee as follows: \$50 to the claimants Joseph P. Smith and Lorraine Durnane and \$25 to the NASD Regulation, Inc.
4. All other relief requests are denied.

**AFFIRMATION**

I, GARY M. LANDAU, ESQ., 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.

A handwritten signature in cursive script, appearing to read "Gary M. Landau", is written over a horizontal line.

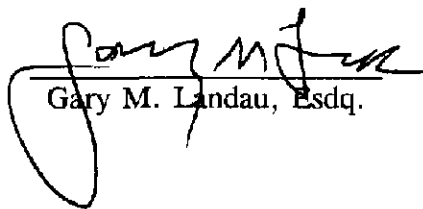
Signature of Arbitrator

DATE OF DECISION: December 6, 1996

## REPORT OF ARBITRATOR

The claimant alleges that broker Li did not abide by claimants' oral instructions to sell his shares of Santa Cruz Operation Inc. at \$10 5/16 or above. Broker Li denies that this order was ever placed, and states that he did not receive an order to sell until the stock had dropped to \$9 1/2. Mr. Li points out that a broker derives no benefit from not executing a trade order.

There is no apparently no paper trail from either party confirming contemporaneous verbal instructions from Mr. Smith to Mr. Li. Because no one besides the parties were privy to the discussions between them, the burden falls on the claimant to prove that these instructions were given to the broker, and that the broker failed to adhere to them. This has not been proven by a preponderance of the evidence. This lack of proof coupled with the lack of a motive by the broker not to abide by a customer's instructions to sell compels me to dismiss the claim.



Gary M. Landau, Esq.