

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Jerome D. Simon and Joyce B. Simon

96-01081

Name of Respondent

La Jolla Capital Corporation

Name of Third-party Claimant

La Jolla Capital Corporation

Name of Third-party Respondent

David W. McMullian

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 11, 1996, Claimants Jerome D. Simon and Joyce B. Simon ("Claimants"), who appeared Pro Se, alleged that Respondent La Jolla Capital Corporation ("Respondent") misrepresented stocks solicited for sale. Claimants further alleged that Respondent's agent, Mr. McMullian encouraged them to purchase Golf Ventures ("GVIC") by promising them that the shares would double or triple in price and stating that Respondent kept such close contact with GVIC, that they had nothing to lose. Claimants asserted that they purchased 400 shares of GVIC at \$5.00 a share on June 21, 1995 because McMullian assured them that he would keep up-to-date with research and keep them informed. Claimants further asserted that when the price of GVIC dropped they received a solicitation call from a person who claimed to be a GVIC officer, advising them to purchase additional shares of GVIC. Claimants contended that after McMullian left the Respondent firm and warned him against the Respondent's business practices, they received soliciting phone calls from Mr. Angiuli, a LaJolla agent who took over Claimant's account. Claimants further contended that Mr. Angiuli convinced them to purchase EIF Holdings ("EIFH") by answering their fears of penny stocks, stating that this was an established company which was booming on the west coast and assured them that the price would at least double, especially if they immediately purchased the shares. Claimants alleged that they initially purchased 1,000 shares of EIFH based on Angiuli's representations and purchased another 1,000 shares of EIFH after Mr. Angiuli told them that the stock was up 15% in less than one day and "was going up like crazy." Claimants further alleged that Respondent failed to maintain adequate contact with them when EIFH's price decreased. Claimants asserted that due to the wrongdoing of the respondent, they have suffered damages for which the Respondent should be held liable.

Respondent La Jolla Capital Corporation ("Respondent"), through its representative and in house-counsel James C. Weaver, Esq., maintained that the brokers that dealt with the Claimants, McMullian and Angiuli, are no longer employed with LaJolla. Respondent further maintained that any alleged hyperbolic statements, stock guarantees, and predictions that were made by McMullian and Angiuli were not taught by LaJolla to its brokers, nor does the firm condone statements of this type to clients. Respondent alleged that any guarantees of stock performance should have put the Claimants on notice that the broker was making unreasonable and impossible statements. Respondent further alleged that if the statements were made as alleged in the claim, no reasonable person would have relied on the representations of the brokers and that Claimants should have declined to engage in the stock transactions. Respondent maintained that it had committed no wrongdoing and requested that the claims against it be dismissed.

Third-party Claimant LaJolla Corporation cross-claimed against Third-party Respondent David W. McMullian. LaJolla alleged that McMullian is the individual who allegedly made the statements to Claimant that appear to be guarantees of stock performance. LaJolla further maintained that it does not teach its brokers to make these statements to clients and that if it is found by the arbitrators that McMullian engaged in such behavior, it was beyond the scope of his employment. LaJolla alleged that Claimant Jerome D. Simon stated in his complaint that McMullian called him at home and advised him "to watch out for their (LaJolla's) business practices". He felt that they required him to do things that he felt uncomfortable with. LaJolla further alleged that these statements constituted McMullian interfering with an existing contractual relationship of LaJolla, and depending on the actual statements made, may constitute trade libel. LaJolla maintained that pursuant to an Independent Contractor's Agreement entered into between the parties, it seeks indemnification from McMullian from any and all losses sustained by it as a result of this action.

Third-party Respondent David W. McMullian, who appeared Pro Se, maintained in his Answer that he explained to Claimant the risks of purchasing GVIC, the volatility of the stock, and the possibility of losing the principal. McMullian further maintained that he never stated that the stock "should double to triple in price" and that he never encouraged Claimant to purchase "thousands of shares." McMullian alleged that he made no guarantees as to the performance of the stock and that he never asked Claimant to buy more shares of GVIC when its price declined. McMullian further alleged that he phoned Claimant after he left LaJolla. McMullian maintained that during the conversation he mentioned that he was uncomfortable with the quality of investments being offered at LaJolla, but that he did not solicit business from Claimant or persuade him to leave LaJolla. McMullian further maintained that he did not libel LaJolla or violate the terms of the Independent Contractor's Agreement. McMullian alleged that he had committed no wrongdoing and requested that the claims against him be dismissed.

RELIEF REQUESTED

Claimant Jerome D. Simon and Joyce B. Simon requested, \$4,803.00 in actual damages, \$4,803.00 in punitive damages, and reimbursement of the \$150.00 filing fee.

Respondent LaJolla Capital Corporation requested that the claims of the Claimant be dismissed. Respondent also requested that it be reimbursed for the costs of the suit, and for such further relief as the arbitrator deems reasonable.

Claimant LaJolla Capital Corporation cross-claimed against David McMullian and requested \$9,900.00 in actual damages.

Third-party Respondent David McMullian requested that the claims against him be dismissed.

AWARD

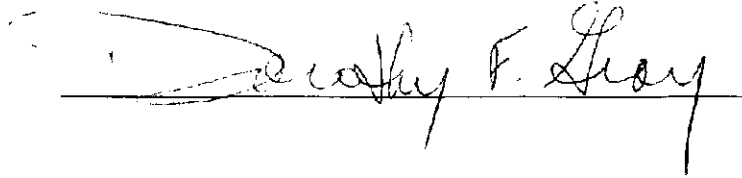
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Dorothy F. Gray, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Jerome D. Simon and Joyce B. Simon on March 2, 1996, and by the Respondent LaJolla Capital Corporation on April 11, 1996, and by the Third-party Respondent David W. McMullian 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. Respondent LaJolla Capital Corporation and Third-party Respondent David W. McMullian are liable and shall pay to Claimants Jerome D. Simon and Joyce B. Simon \$1,501.50.
2. The claims of Third-party Claimant LaJolla Capital Corporation against Third-party Respondent David W. McMullian are dismissed in their entirety.
3. All other requests for relief are denied.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Jerome D. Simon and Joyce B. Simon shall be retained by the NASD, Inc.
6. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Third-party Claimant LaJolla Capital Corporation shall be retained by the NASD, Inc.

AFFIRMATION

I, **DOROTHY F. GRAY, 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, reading "Dorothy F. Gray", is written over a horizontal line.

DATE OF DECISION: December 6, 1996