

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Elizabeth Stapleton

96-01105

Name of Respondents

Jeffrey Keith Trilling  
LaJolla Capital Corporation

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REPRESENTATION

For Claimant, Elizabeth Stapleton ("Stapleton"): Vincent J. D'Antonio, Esq., Fort Lauderdale, Florida.

For Respondent, LaJolla Capital Corporation ("LaJolla"): James C. Weaver, Esq., San Diego, California.

For Respondent, Jeffrey Keith Trilling ("Trilling"): Mark T. Daly, Jr., Esq. of the Stoppelman Law Firm, McLean, Virginia.

CASE INFORMATION

Statement of Claim filed: March 13, 1996.

Claimant's Submission Agreement signed on: April 3, 1996.

Statement of Answer filed by Respondent, Trilling on: May 31, 1996.

Statement of Answer filed by Respondent, LaJolla on: June 3, 1996.

Respondent, LaJolla's Submission Agreement signed on: May 28, 1996.

Respondent, Trilling's Submission Agreement signed on: May 17, 1996.

HEARING INFORMATION

One pre-hearing conference and six hearing sessions were conducted in this matter on August 28, 1996 and September 11, 12 and 13, 1996 in Fort Lauderdale, Florida.

### CASE SUMMARY

Claimant alleged that she is an 87 year old widow who opened an account with the Respondents, LaJolla and Trilling in March of 1995; that Trilling made unauthorized trades beginning on April 10, 1995 and continuing periodically throughout the period of trading; that, in addition, Claimant was subjected to recommendations of unsuitable securities to purchase; that the securities that were purchased while at LaJolla were highly speculative and in direct contravention to the objectives that Claimant delivered to the Respondents upon opening her account; that upon review of the discovery materials it was discovered that the Respondents consistently charged a mark-up of over 5% to Claimant and traded in the highly speculative securities because it led to large profits for the Respondents, regardless of the results for the Claimant.

Respondent, LaJolla, Capital Corporation, maintained that the Claimant was a sophisticated investor with a history of transactions involving penny stocks and small capital stocks; that Claimant kept extensive records regarding her stock portfolio; that the broker, Trilling, made a thorough investigation of the Claimant's background and current stock positions, and spoke with her numerous times on the telephone regarding all transactions in her account; that all of the trades were suitable according to Claimant's objectives and that all trades were authorized by her. Respondent, LaJolla, further stated that the hearing was the first time that Respondents received notice of the alleged excess commissions and that they objected to its inclusion in the case and maintained that there were no excess commissions charged on any of the trades.

Respondent, Trilling, denied Claimant's allegations that he engaged in unauthorized trades in Claimant's account and placed her in unsuitable investments, and denied Claimant's claims of fraud, churning, negligent misrepresentation, professional negligence, and infliction of emotional distress. Respondent, Trilling, further maintained that: (i) Claimant had considerable investment experience and detailed knowledge of high risk and small cap stocks; (ii) all trades were fully discussed with and authorized by Claimant before they were made; (iii) the investments recommended by Trilling were suitable for Claimant in view of her investment history and her knowledge of the market and small cap stocks; and (iv) Claimant repeatedly declined to follow Trilling's advice to invest in less speculative and more liquid securities. Additionally, Respondent, Trilling, asserted a number of affirmative defenses, including (i) Claimant's failure to state a claim upon which relief can be granted, (ii) Trilling was not negligent because he exercised due diligence, (iii) estoppel, (iv) contributory negligence of Claimant, (v) assumption of risk by Claimant, (vi) the non-existence of a cause of action for "professional negligence," and (vii) the non-existence of a private cause of action for violation of the NASD's Rules of Fair practice.

### RELIEF REQUESTED

Claimant requested the following damages:

1. The difference between the actual value of the account when transferred from Respondent LaJolla Capital Financial Corporation around September, 1995, and what it should have been worth had the alleged wrongdoing not occurred; an amount totalling \$30,298.81;

2. The transaction costs due to the alleged unauthorized trades, \$2,432.00;
3. Lost interest on the principal amount of \$5,200.00;
4. Interest on \$37,930.81 from September 1, 1995;
5. Punitive damages under the maximum amount allowable under Florida Law, \$113,792.43; and,
6. Reasonable attorneys' fees and such other damages as may be determined by the panel.

Respondent LaJolla Capital Corporation requested a dismissal of all claims and that Respondents be awarded the costs of defending this action, including attorneys' fees, and such other costs as the panel may deem proper.

Respondent Jeffrey Trilling requested full and complete relief from the charges alleged by the Claimant, a dismissal of all claims and that his attorneys' fees, costs and any and all related expenses be awarded to him.

#### **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.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondents, LaJolla and Trilling are hereby found liable, jointly and severally, and shall pay to the Claimant the sum of \$15,418.01 plus simple interest at the rate of 10% per annum from July 15, 1995 until September 15, 1996 in the amount of \$1,799.00 for a total due to Claimant of \$17,217.01.
2. Claimant's request for punitive damages is hereby denied.
3. Each party shall bear their respective attorneys' fees.
4. All other claims are hereby denied.

#### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$4,800.00 (6 hearing sessions x \$750.00) plus one pre-hearing conference (\$300.00).

1. Respondents, LaJolla and Trilling, are hereby assessed Forum Fees, jointly and severally, in the amount of \$4,800.00, \$750.00 of which shall be paid directly to the Claimant and the remaining \$4,050.00 shall be paid to the NASD.
2. The NASD shall retain the \$200.00 non-refundable filing fee previously paid by the Claimant to the NASD.
3. The NASD shall retain the \$350.00 non-refundable member surcharge paid by Respondent, LaJolla.

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

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

/s/

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Michael Lukasievich, Esq.

Public/Chairman

/s/

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E. Leonard Pacun

Public/Panelist

/s/

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Dione E. Pritchard

Industry/Panelist

Date of Decision: November 11, 1996