

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

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In the Matter of the Arbitration Between

Name of Claimant

James M. Copperthite

96-01171

Name of Respondent

La Jolla Capital Corp

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**REPRESENTATION**

Claimant James M. Copperthite ("Claimant") was represented by John P. McKenna, Esq. of the law firm of Stohlman, Beuchert, Egan & Smith, Washington, DC.

Respondent La Jolla Capital Corporation ("Respondent") was represented by James C. Weaver, Attorney at Law, San Diego, CA.

**CASE INFORMATION**

Statement of Claim filed: March 15, 1996

Claimant's Submission Agreement signed on: March 12, 1996

Statement of Answer filed by Respondent on: May 13, 1996

Respondent's Submission Agreement signed by B.J. Gallison, President La Jolla Capital Corporation on: May 10, 1996

**HEARING INFORMATION**

Hearing Date/Session: October 21, 1996 - one session

Hearing Location: NASD Executive Office, Washington, DC

**CASE SUMMARY**

Claimant requested in this arbitration to be indemnified by Respondent for \$5,813, the amount of an arbitration award entered against Claimant in NASD Arbitration No. 94-05256, and also seeks recovery of punitive damages and filing fees. The total claimed is \$24,052.

Claimant alleged, among other things, that Respondent is a securities broker/dealer and a member of NASD, with home offices in San Diego. Claimant alleged that he was a registered representative at Respondent's branch office in Bethesda, Maryland. Claimant alleged that in NASD Arbitration No. 94-05256, he was ordered to pay Steven H. Jasser, a customer of Respondent's Bethesda, Maryland branch,

a total of \$5,813 in connection with an order placed by Mr. Jasser in August 1994 for the purchase of 5,000 shares of EIF Holdings, Inc. Claimant seeks indemnification on two distinct theories. First, Claimant alleged that the liability to Jasser was attributable to Respondent's conduct rather than Claimant's. Second, Claimant alleged that Respondent, who was not a party to the Jasser arbitration, had assured Claimant that it would pay any award entered against him. In reliance upon this commitment, Claimant refrained from joining Respondent as a party to the proceeding. Claimant seeks punitive damages because of La Jolla having reneged on its commitment, thereby subjecting him to mental and emotional stress and forcing him to institute this arbitration proceeding.

Respondent maintained, among other things, that the original arbitration award was erroneous and that Claimant should have prevailed. Respondent maintained that it never agreed to indemnify Claimant for any losses and there was no oral or written indemnification agreement between the parties.

Respondent maintained that the independent contractor agreement between Claimant and Respondent, which was attached to the Answer to the Statement of Claim wherein Claimant agreed to indemnify Respondent for losses and costs as a result of the Claimant's activities with Respondent, required Claimant to indemnify Respondent for any loss incurred as a result of this matter and not vice versa.

#### **RELIEF REQUESTED**

Claimant requested a total award of \$24,052, consisting of (a) \$5,813, the amount that Copperthite had to pay Jasser in satisfaction of the related arbitration award, (b) \$17,439 in punitive damages, and (c) filing fees of \$800.

Respondent requested that Claimant's claim be dismissed, and that Claimant recover nothing. Respondent requested that if Claimant is awarded anything, that Respondent be indemnified for such award, that Respondent be awarded costs of defending this action, including attorney's fees, and such other costs as the arbitrator deem proper.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent requested that the President of the Respondent, Harold B. Gallison, Jr., be permitted to testify over the telephone from San Diego, California. The arbitrator considered this request and denied it. Respondent's attorney objected to that denial. Mr. Gallison did not testify at the hearing.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent La Jolla Capital Corporation is liable to Claimant James M. Copperthite and shall pay to Claimant the sum of \$5,813; plus eight percent (8%) compound interest per annum from September 1, 1995 until the date the award is paid
2. Claimant's claim for punitive damages is denied.

3. The parties shall bear their respective costs including attorneys' fees and with the exception of forum fees addressed below.

**FORUM FEES**

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the following forum fees are assessed:

1 hearing sessions x \$300 = \$300

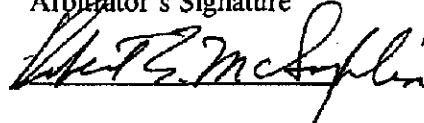
Claimant has deposited a hearing session fee of \$300 and a filing fee of \$500

The Arbitrator assesses all forum fees against Respondent so that Respondent shall refund to Claimant his initial hearing session deposit of \$300 plus his filing fee of \$500 so that Respondent will refund Claimant a total of \$800 which equals Claimant hearing session deposit and filing fee.

Date

November 9, 1996

Arbitrator's Signature



Robert E. McLaughlin, Esq., Presiding  
Public Arbitrator

Date Award Served by the NASD Regulation: November 16, 1996