

NASD REGULATION AWARD

NASD REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

John Schley

96-03201

Name of Respondents

Robert M. Grinberg  
La Jolla Capital Corporation

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**REPRESENTATION**

For Claimant, John Schley ("Claimant"), appeared Jane Barton, Esq. of the law firm Reboul, MacMurray, Hewitt, et al.

For Respondent, Robert M. Grinberg ("Grinberg"), appeared William Ryder located in New York, New York.

For Respondent, La Jolla Capital Corporation ("La Jolla"), appeared James Weaver located in San Diego, California.

**CASE INFORMATION**

The Statement of Claim was filed September 5, 1996.

Claimant's Submission Agreement was signed on March 19, 1995.

A Statement of Answer was filed by Respondent La Jolla on November 7, 1996.

Respondent La Jolla's Submission Agreement was signed on November 6, 1996.

A Statement of Answer was filed by Respondent Grinberg on October 9, 1996.

Respondent Grinberg's Submission Agreement was signed on October 9, 1996.

**HEARING INFORMATION**

Hearing dates/sessions: February 12, 1997 - Three Sessions

The hearings were held at the Club Quarters, 52 William Street located at New York, New York.

### **CASE SUMMARY**

Claimant alleged that at all relevant times Grinberg was his broker and was employed by La Jolla, a brokerage house. Claimant further alleged that on February 9, 1995 he purchased 4,000 shares of Viva Medical Sciences Corp. ("Viva") at \$8.50 per share. Claimant also alleged that Grinberg recommended this stock and he agreed to purchase it on the condition that La Jolla would issue a stop loss order should the price of the stock drop below \$7.50 per share. Claimant asserted that the stock dropped below \$7.50 a share and Grinberg failed to sell the stock. Claimant further asserted that Grinberg later told him that a stop loss order was not available on Viva stock and what he really intended was to issue a "mental stop loss order" but was not able to do so because the price of the stock dropped more than four dollars per share overnight. Claimant also asserted that the price per share did not drop four dollars "overnight" but, instead, the price of the stock went above and below \$7.50 a share several times over the first two weeks in March, 1995 so a stop loss order, "mental" or otherwise should have been executed. Claimant contended that, on June 2, 1995, he sold his shares of Viva stock and that 2,500 shares were sold for \$.75 per share and 1,500 shares were sold for \$0.625 per share resulting in a loss of \$31,292.50.

Respondent Grinberg admitted that he was Claimant's broker and that on his recommendation Claimant purchased 4,000 shares of Viva stock on February 9, 1995. Grinberg maintained that he never made any representations or promises that he would issue a "mental stop loss order" or any other type of stop loss order against Viva or that Claimant's losses would be limited to \$1.00 a share.

Grinberg also maintained that Claimant's claim fails because: it does not set forth a valid cause of action; losses suffered by Claimant are due solely to market forces; Claimant assumed the risk of loss when he invested in the market; and by waiting until the price of Viva stock to drop below \$1.00 before selling the stock, Claimant failed to mitigate his damages.

La Jolla maintained that Grinberg never represented to Claimant that he would execute a "mental stop loss order" or any other type of stop loss order on Viva stock. La Jolla further maintained that the confirmation slip on Claimant's purchase indicated the sell value on the stock was \$7.00 per share and Claimant did not protest, even though he must have known that the value of his stock had slipped below \$7.50. La Jolla contended that the stock declined so rapidly that it was impossible to sell the shares at certain times. La Jolla further contended that, if Grinberg did represent he would issue a "mental stop loss order", or any stop loss order, then such action was done with out the knowledge, consent or ratification of the respondent and that it was outside the scope of Grinberg's employment.

### **RELIEF REQUESTED**

Claimant requested: compensatory damages in the amount of \$31,292.50; punitive damages in the amount of \$250,000.00; interest; costs and reasonable attorney's fees.

Respondent Grinberg requested: Claimant's claims be dismissed in their entirety, fees, costs, and attorney's fees.

Respondent La Jolla requested: Claimant's claims be dismissed in their entirety, costs, attorney's fees and such other relief as is just.



**ARBITRATORS' SIGNATURES**

I, Stephen H. Busch, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Stephen H. Busch

I, Charles L. Prothero, III, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Charles L. Prothero, III, Esq.

I, Lionel C. Bandler, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Lionel C. Bandler

Date of Decision: April 28, 1997

ARBITRATORS' SIGNATURES

I, Stephen H. Busch, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Stephen H. Busch

I, Charles L. Prothero, III, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
Charles L. Prothero, III, Esq.

I, Lionel C. Bandler, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Lionel C. Bandler

Date of Decision: April 28, 1997

ARBITRATORS' SIGNATURES

I, Stephen H. Busch, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Stephen H. Busch

I, Charles L. Prothero, III, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Charles L. Prothero, III, Esq.

I, Lionel C. Bandler, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
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Lionel C. Bandler

Date of Decision: April 28, 1997