

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

John Jonen

and

96-03341

Name of Respondent

LaJolla Corporation
Robin Rushing
Peter D. Ragofsky

REPRESENTATION OF PARTIES

John Jonen ("**Claimant**") was represented by Nathan D. Simmons, Esq., Jones & Keller, P.C., Denver, Colorado.

LaJolla Corporation ("**Respondent LaJolla**") and Robin Rushing ("**Respondent Rushing**") were represented by James C. Weaver, Esq., San Diego, California.

Peter D. Ragofsky ("**Respondent Ragofsky**") was represented by James A. Prestiano, Esq., New York, New York. Both Mr. Ragofsky and Mr. Prestiano participated in this hearing telephonically.

CASE INFORMATION

The Statement of Claim was filed on or about August 5, 1996. Submission Agreement of Claimant John Jonen was signed on August 2, 1996.

Statement of Answer was filed by Respondents LaJolla Corporation and Robin Rushing on or about November 5, 1996. Submission Agreement of Respondent LaJolla Corporation was signed on September 16, 1996 by B.J. Gallison. Submission Agreement of Respondent Robin Rushing was signed on October 29, 1996.

Statement of Answer was filed by Respondent Peter D. Ragofsky on or about October 14, 1996. Submission Agreement of Respondent Peter D. Ragofsky was signed on October 11, 1996.

HEARING INFORMATION

The hearing was held on Thursday, April 24, 1997 for two (2) sessions, Friday, April 25, 1997 for two (2) sessions, Tuesday, May 6, 1997 for two (2) sessions and Wednesday, May 7, 1997 for two (2) sessions in Denver, Colorado for a total of eight (8) sessions.

CASE SUMMARY

Claimant alleged that Respondents engaged in the following activities: misrepresentations; fraud; violations of Rule 10b-5 promulgated under the Securities Exchange Act of 1934; were negligent; and violated the Colorado Securities Act. Specifically, Claimant stated that Respondent Ragofsky enthusiastically promoted his purchase of Gulf West Oil stock and persuaded him to sell other stocks to use the proceeds to purchase the Gulf West Oil stock. Claimant stated that Respondent Ragofsky made misstatements of fact and omitted to state material facts in connection with these transactions. It was also alleged that Respondent Ragofsky failed to disclose the risks associated with the purchase of the Gulf West Oil stock. Claimant alleged that Respondent LaJolla as a market maker for Gulf West Oil, engaged in a scheme to artificially drive up the price of the stock.

Claimant further alleged that Respondents knew that the Nevada Manhattan Mining, Inc. stock was restricted and that in spite of that knowledge Respondent Ragofsky represented to him that there would not be a problem selling the stock and failed to inform him of the difficulties associated with the sale of restricted stock.

Respondents LaJolla and Rushing denied the allegations set forth in the Statement of Claim. Respondents LaJolla and Rushing specifically stated that Claimant misled the broker as to the status of the stock. It was further stated that there was a problem with the restrictions on the stock and after Claimant inappropriately used the proceeds from the sale of the Nevada Manhattan Mining, Inc. stock to purchase Gulf West Oil stock, Claimant was in effect, short free trading the Nevada Manhattan Mining, Inc. stock.

Respondent Ragofsky denied the allegations set forth in the Statement of Claim. Specifically, Respondent Ragofsky denied making any misrepresentations of material facts to Claimant regarding any of the securities in the Claimant's account.

RELIEF REQUESTED

Claimant requested an award of :

- as the arbitrators deem necessary to make him whole and leaving him in possession of 19,500 shares of Calais stock in return for the proceeds from the sale of those shares by LaJolla in April 1996, an order, to the extent possible, that LaJolla's sales of 19,500 shares

of Calais out of his account be rescinded, and/or that up to 12,700 shares of Calais stock be purchased into his account; or, in the alternative, an award of damages in an amount sufficient to purchase 12,700 shares of Calais stock, including all cost and expenses incident to such purchase, as of the day that Respondents pay such damages.

- ▶ Damages (in addition to those incident to the increase in the price of the Calais stock and expenses to reacquire 12,700 shares of Calais stock) including spreads and commissions incurred by Claimant as a result of Respondents' wrongful conduct, taxes incurred by Claimant as a result of unauthorized trades, losses due to stock trades not executed in accordance with Claimant's authorizations, attorneys' fees and expenses incurred in connection with respondents' wrongful conduct and interest.
- ▶ Exemplary damages.
- ▶ Such other relief as the arbitrators may deem just and proper.

Respondents LaJolla and Rushing requested that the Claimant recover nothing on his claim, for costs of arbitration, for attorneys' fees, and for such other relief as the arbitrators may deem reasonable.

Respondent Ragofsky demanded an award dismissing the claims against him. In addition, Respondent Ragofsky requested costs, disbursements, and reasonable attorneys' fees incurred in connection with defending this frivolous claim, and such other just and equitable relief as the arbitrators deem appropriate.

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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

1. Respondent LaJolla Corporation shall be and hereby is liable for and shall pay to the Claimant John Jonen the sum of \$37,400 (**thirty seven thousand four hundred dollars**).
2. Interest at the rate of 8% per annum is awarded on the above stated sum from and inclusive of April 24, 1996 to and inclusive of the date this award is paid in full.

3. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were eight (8) sessions x \$750 = \$6,000 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant John Jonen. Claimant John Jonen shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$750 as forum fees. Respondent LaJolla Corporation shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,250 as forum fees. Respondent Robin Rushing shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,500 as forum fees. Respondent Peter D. Ragofsky shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,500 as forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the amount of \$750 previously deposited by Respondent LaJolla.

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, Respondent LaJolla Corporation shall be and hereby is liable for and shall pay to the NASD Regulation Inc. Office of Dispute Resolution 1/2 of the costs for the telephonic testimony of Respondent Robin Rushing and B.J. Gallison. Respondent Peter D. Ragofsky shall be and hereby is liable for and shall pay to the NASD Regulation Inc. Office of Dispute Resolution 1/2 of the costs for the telephonic testimony of Respondent Robin Rushing and B.J. Gallison and the costs for his telephonic participation and

the telephonic participation of his attorney. The actual costs will be invoiced by the NASD Regulation, Inc. Office of Dispute Resolution upon receipt of the telephone charges. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

/s/ Thaddeus J. Tecza, Ph.D
Thaddeus J. Tecza, Ph.D
Public Arbitrator, Presiding Chair

Dated: May 27, 1997

/s/ Joseph P. Natale
Joseph P. Natale
Public Arbitrator

June 3, 1997

/s/ Gerald K. Moore
Gerald K. Moore
Industry Arbitrator

May 28, 1997