

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Vincent Mongno
Dianne Borden

96-03449

Name of Respondents

Donson Gene Brooks
Harold Bailly Gallison
La Jolla Capital Corp.

REPRESENTATION

Claimants Vincent Mongno ("Mongno") and Dianne Borden ("Borden") appeared pro se.

Respondent Donson Gene Brooks ("Brooks") was represented by Tracy Pride Stoneman, Esq. of Susemihl & McDermott, P.C., Phoenix, Arizona. However, at the hearing, Respondent Brooks appeared pro se.

Respondents Harold Bailly Gallison ("Gallison") and La Jolla Capital, Corp. ("La Jolla") were represented by James C. Weaver, Esq. of James C. Weaver Attorney At Law, San Diego, California.

CASE INFORMATION

Statement of Claim filed: August 12, 1996.

Claimants' Joint Submission Agreement signed on: November 7, 1996.

Statement of Answer filed by Respondent Brooks on: May 6, 1997.

Respondent Brooks' Submission Agreement signed on: October 7, 1997.

Joint Statement of Answer filed by Respondents Gallison and La Jolla on: January 6, 1997.

Respondent Gallison's Submission Agreement signed on: December 2, 1996.

Respondent La Jolla's Submission Agreement signed on: December 2, 1996.

HEARING INFORMATION

On May 13, 1997 a telephonic pre-hearing conference lasting one session was conducted.

On October 6, 7, 8, 9, 1997, hearings lasting ten (10) sessions were conducted in Tampa, Florida.

CASE SUMMARY

Claimants alleged that they gave a loan to Respondent Brooks which he failed to repay and Claimants thereby alleged liability against Respondents, jointly and severally, for breach of agreement; fraudulent representation, tortious interference with an employment agreement, concealment, conversion, constructive fraud, civil theft, and aiding and abetting. Additionally, Claimants alleged control person liability against Respondents Gallison and La Jolla.

Respondent Brooks denied each and every allegation of wrongdoing set forth in Claimants' Statement of Claim and maintained that the loan was given to him as part of an offer of employment; that Claimants defrauded and deceived him and failed to fulfill their end of the bargain, thereby forcing Respondent Brooks to seek employment elsewhere.

Respondents Gallison and La Jolla alleged that they were not a party to the loan agreement and had no knowledge of the agreement until June 1995; that they did not commit fraud on the Claimants and do not have any obligations imposed upon them by any statutes or laws with respect to their conduct with Claimants; and, that the promissory note was not a security and the securities laws of the state of Florida and the United States do not apply to the facts of this case. Respondents Gallison and La Jolla further alleged that Claimants do not have standing to bring this action against Gallison or La Jolla since the loan came from H.D. Brous who never assigned his claim against Gallison or La Jolla to the Claimants.

RELIEF REQUESTED

Claimants requested relief in the form of an Award against Respondents jointly and severally to include repayment of the loan, plus compensatory damages, and interest and expenses in the sum of \$88,636.00. Claimants further requested punitive and treble damages, a specific finding of fraud, an assessment of forum fees against the Respondents and a disciplinary referral to NASD Regulation, Inc. with regard to the Respondents' conduct.

Respondent Brooks requested dismissal without award of Claimants' claims and requested attorneys' fees and costs in the sum of \$4,785.00.

Respondents Gallison and La Jolla requested an award in their favor dismissing the action against them plus attorneys' fees and costs of the action.

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 NASD Regulation, Inc.

AWARD

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

1) Respondent Brooks is found liable on the fraud count and shall pay to Claimants Mongno and Borden damages in the sum of \$53,507.00.

- 2) Respondent Brooks is found liable and shall pay to Claimants Mongno and Borden, jointly and severally, the sum of \$1,250.00 representing reimbursement of their previously paid claim filing fee and hearing session deposit.
- 3) The Claimants' request for a disciplinary referral to NASD Regulation, Inc. is granted as to the conduct of Respondent Brooks, Gallison and La Jolla.
- 4) Respondents Gallison and La Jolla are found not liable and, therefore, all claims against them are hereby dismissed.
- 5) The Claimants' request for punitive and treble damages is denied.
- 6) Respondents Gallison and La Jolla's request for attorneys' fees and costs is granted in that Claimants are jointly and severally liable and shall pay to Respondents Gallison and La Jolla, jointly and severally, the sum of \$10,627.00; this sum shall be paid by Claimants to Respondents Gallison and La Jolla from the monies paid to them by Respondent Brooks.
- 7) Respondent Brooks' request for costs and attorneys' fees is denied.

FORUM FEES

Pursuant to Rule 10205 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the sum of \$8,250.00 (one pre-hearing conference x \$750.00 plus ten hearing sessions x \$750.00).

Respondent Brooks is hereby assessed \$8,250.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited by the Claimants in partial satisfaction thereof, leaving a balance due in the sum of \$7,500.00.

NASD Regulation, Inc. shall retain the \$300.00 member surcharge previously paid by Respondent La Jolla.

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

Concurring Arbitrators' Signatures

/S/

A. William Cohen, Esq.
Chairperson
Industry Arbitrator

/S/

John A. Bevier
Industry Arbitrator

/S/

Herbert Schwartz
Industry Arbitrator

11/18/97

Date of Decision: _____