

NASD REGULATION, INC. AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Leo F. Brac

96-05224

Name of Respondent

Donaldson Lufkin & Jenrette Securities

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REPRESENTATION

Claimant Leo F. Brac ("Claimant") was represented by Jonathan Kord Lageman, Attorney-at-Law, New York, New York.

Respondent Donaldson Lufkin & Jenrette Securities ("Respondent") was represented by Joseph D. Donnelly, Esq., Associate General Counsel at Donaldson, Lufkin & Jenrette Securities, Inc., Jersey City, New Jersey.

CASE INFORMATION

Statement of Claim filed: November 19, 1996

Claimant's Submission Agreement signed on: November 18, 1996

Statement of Answer filed by Respondent on: January 17, 1997

Respondent's Submission Agreement was executed by Joseph D. Donnelly as Managing Director of Donaldson Lufkin & Jenrette Securities Corporation on: January 17, 1997

HEARING INFORMATION

Pre-Hearing Conference with Chair: June 24, 1997 - one session

Hearing Dates/Sessions:      October 15, 1997 - two sessions  
   October 16, 1997 - one session  
   November 10, 1997 - two sessions

Hearing Location:              NASD Regulation, Inc., Office of Dispute Resolution, New York, NY

### CASE SUMMARY

Claimant, alleged among other things, fraud, negligence, breach of contract, breach of fair dealing, and negligent misrepresentation against Respondent. Claimant alleged that Respondent committed fraud by omitting material facts in connection with the sale of stock in Providence Journal Company ("PJC") and by misrepresenting the PJC's worth.

Claimant is a retired executive of the National Broadcasting Company ("NBC"). Claimant alleged that he initially held his account at C.S. First Boston ("First Boston") with registered representative Frank Reiss ("Reiss"). Through acquaintances in the television industry, Claimant alleged he learned that PJC was going public. In June of 1996, Claimant alleged he telephoned Reiss to purchase PJC stock on the initial public offering. Claimant alleged he received an allocation of 1,100 shares. Claimant alleged that he made an additional unsolicited purchase of 18,900 shares of PJC in the aftermarket for a total position of 20,000 shares. Claimant alleged that in July, 1996 Reiss notified Claimant that he was leaving First Boston to join Respondent. Claimant transferred his account to Respondent in mid-August of 1996.

Claimant alleged that his decision to transfer was based on Reiss' letter and its attachments which were an Equities brochure from Respondent and a reprint of an Institutional Investor article, "The 1995 All-America Research Team." These documents stressed Respondent's commitment to research.

Claimant alleged that on September 3, 1996, he phoned Reiss for price quotes. In that discussion, Claimant alleged that Reiss advised him to sell his shares in PJC and invest in oil companies. Claimant alleged that Reiss told him that Claimant could lose his profit in PJC if he did not sell as Respondent did not think that PJC was worth more than \$20 a share and that there was no appreciable upside as the price was approximately \$19 a share. Claimant claimed he authorized the sale of his PJC shares with the belief that he was following the recommendation of Respondent's research.

On September 26, 1996, Claimant claims he found out that A.H. Belo Corporation announced that it was acquiring PJC for a value of \$32.53 per share. Claimant alleged that he called Reiss, and said that he never would have sold PJC if Respondent had not said that PJC was not worth more than \$20 a share. Claimant claimed that Reiss denied ever making such statements, and that he then called Reiss a liar.

Claimant claimed he was stunned when he looked up PJC in Respondent's September Research Fact Book. It stated that an "acquisition frenzy is growing" in the telecommunications industry, listing a 15% return on PJC stock in addition to significantly increasing revenues. Claimant subsequently received Respondent's research report on PJC, in which PJC had been given the highest "outperform" buy rating.

Respondent denied all allegations of wrongdoing asserted by Claimant and maintained that Claimant is a greedy investor who wishes he had made more money on a stock. Although Claimant blames his registered representative, Respondent maintained that Claimant only brought this claim against Respondent to shift the blame of his own decisions off his shoulders where it belongs and onto the back of a presumably faceless corporation. Respondent maintained that when Claimant transferred his account with Reiss to Respondent, Claimant was merely a customer following his broker and did not base his decision upon any reliance on Respondent's research.

Respondent denied it breached any duty to Claimant or that Claimant had been damaged in any compensable way. Respondent denied the fraud allegation by stating that it only charged six cents (\$.06) per share on the sale of Claimant's stock in PJC.

Respondent maintained that nothing was hidden from Claimant, and that Claimant was not misled. Respondent maintained that Reiss himself sent Claimant the DLJ FactBook. Respondent maintained that it was Claimant who initiated the sale of 10,000 shares of PJC on September 3, 1996 at a price of \$18.875. Respondent maintained that Reiss did not discover Respondent's research on PJC until after the sale had been completed, at which time he brought this information to Claimant's attention. Respondent claims that Claimant response was to order the sale of the remaining 10,000 shares and to berate Reiss for not having known this information on September 3. Respondent maintained that if Claimant had felt he had been misled, he should have repurchased the shares in order to mitigate or avoid loss.

#### **RELIEF REQUESTED**

Claimant requested \$273,063 in compensatory damages as this is the difference between what Claimant would have received on the sale of his PJC stock had Respondent's research recommendation not been allegedly withheld, plus interest at the statutory rate of 9% per annum from September, 1996 to date of payment and assessing all costs of this proceeding against Respondent.

Respondent requested that the panel enter an award the claim in its entirety.

#### **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 have the award faxed to them, receiving conformed copies while the original remains 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. That Respondent is liable to Claimant and shall pay claimant the sum of \$50,000 in compensatory damages, plus 7% simple interest per annum from September 9, 1996 until the date the award is paid.

FORUM FEES

Pursuant to Rules 10332(c) and 10205(c) of the Code of Arbitration Procedure, the following Forum Fee are assessed:

$[1 \text{ prehearing} \times \$300 = \$300] + [5 \text{ sessions} \times \$750 = \$3,750] = \$4,050 \text{ Total Forum Fees}$

Respondent paid their Member Surcharge fee of \$350.

Forum Fees are assessed equally between Claimant and Respondent as follows:

Claimant is assessed the amount of \$2,025. Claimant is entitled to offset this amount with his hearing session deposit of \$750, so that the amount due from Claimant as forum fees is \$1,275.

Respondent is assessed forum fees in the amount of \$2,025.

Fees are payable to NASD Regulation, Inc.

DATE AWARD SIGNED:

Concurring Arbitrators' Signatures

12/30/97



Richard W. Vallario, Esq. - Chairman  
Public Arbitrator

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Elizabeth Lubetkin - Panelist  
Public Arbitrator

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Joel Faber - Panelist  
Industry Arbitrator

Date Award served by NASD Regulation:

December 31, 1997

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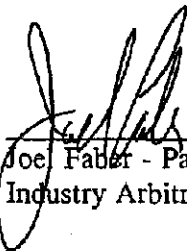
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