

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Abed Hishmeh

96-05442

Name of Respondents

LaJolla Capital Corporation
Patrick T. Montague

REPRESENTATION

Claimant Abed Hishmeh ("Claimant") was represented by John P. Lynch, Esq., McNamee, Hosea, Jernigan & Kim, Greenbelt, MD.

Respondents LaJolla Capital Corporation ("LaJolla") and Patrick T. Montague ("Montague") were represented by James C. Weaver, Esq., San Diego, CA.

CASE INFORMATION

The Statement of Claim was filed December 9, 1996.

Claimant's Uniform Submission Agreement was signed November 26, 1996.

The Joint Statement of Answer of LaJolla and Montague (collectively "Respondents") was filed February 26, 1997.

LaJolla's Uniform Submission Agreement was signed February 21, 1997.

Montague did not submit an executed agreement to arbitrate.

HEARING INFORMATION

Hearing Date/Sessions: July 22, 1997/one session

Hearing Location: NASD Headquarters
Washington, D.C.

CASE SUMMARY

Claimant alleged that after continuing pressure from Montague, a customer of Claimant's lunch shop, Respondents persuaded Claimant to authorize the liquidation of his sole \$15,000 investment held in a New York Life mutual fund. Claimant further alleged that Respondents induced him to purchase individual stocks recommended by Montague. Claimant alleged that he was an unsophisticated investor and that other than the one mutual fund investment, Claimant had no other investment experience. Claimant asserted that he repeatedly advised Respondents that he did not want risky investments where his principal

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was in jeopardy. Claimant alleged that Respondents first recommended that Claimant purchase shares of MCI Communications followed by shares of Washington Gas & Light.

Claimant alleged that approximately two months after the initial purchase of MCI, Respondents recommended the MCI shares be sold and that Claimant purchase 9,400 shares of Maxxim International Corporation ("Maxxim") at 58 cents per share. Claimant alleged that the day after the purchase of Maxxim, the share price fell to 28 cents per share, followed by a 100 to 1 reverse stock split within three weeks. Claimant alleged that within eight months, Claimant's 94 shares of Maxxim were valueless. Claimant asserted that Respondents were paid a gross commission for the Maxxim purchase in the amount of \$1,034.00, on a \$5,486.50 transaction. Claimant also alleged that Respondents also sold Maxxim to 13 other customers within a sixty day period. Claimant alleged that LaJolla failed to exercise adequate supervision over Montague in the management of Claimant's account. Claimant alleged that by recommending Maxxim, Respondents breached their fiduciary duty to Claimant, failed to exercise due diligence in investigating the stock, failed to consider the suitability of the investment and violated the "know your client" rule.

Respondents denied all allegations of wrong-doing as asserted in the Statement of Claim. Respondents maintained that Montague comported himself in a professional manner and that LaJolla properly supervised Montague. Respondents maintained that there was no continuous pressure on Claimant to purchase stock or to sell stock and that Claimant was not induced to authorize transactions. Respondents maintained that Montague would make recommendations to Claimant and then Claimant made his decisions on whether to buy or sell stocks. Respondents maintained that Claimant is a competent adult and none of the trades were unauthorized but executed only with the consent of Claimant.

Respondents maintained that Montague did not misrepresent the nature and appropriateness of Maxxim but made a recommendation to Claimant based upon the facts and financials that were available. Respondents maintained that the speculative nature of Maxxim was explained to Claimant and that there was a risk involved in the investment. Respondents maintained that Claimant weighed these risks and made the investments.

RELIEF REQUESTED

Claimant requested damages in the amount of \$10,000.00; punitive damages of \$10,000.00 and attorneys' fees.

Respondents requested that the Statement of Claim be denied.

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 the NASD.

Respondent Montague did not file with the NASD Regulation a properly executed submission to arbitration but the panel determined that Respondent Montague is required to submit to arbitration pursuant to Rule 10301 of the NASD Regulation Code of Arbitration Procedure and the by-laws of the NASD and therefore Respondent Montague is bound by the rulings of the panel.

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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 Respondents are jointly and severally liable to Claimant for \$6,500.00 inclusive of interest.
2. That Respondents are jointly and severally liable to and shall reimburse directly to Claimant the \$100.00 filing fee and the \$400.00 hearing session deposit previously submitted to the NASD Regulation.
3. That the claim for punitive damages is denied.
4. That each party shall bear its own costs and expenses, including attorney's fees with the exception of the Forum Fees as specified below.
5. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 Respondent LaJolla Capital Corporation is assessed a member surcharge of \$200.00. Respondent LaJolla Capital Corporation is to receive credit for the \$200.00 surcharge deposit previously submitted to the NASD Regulation, thus leaving no further surcharge due.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 sessions x \$400.00 = \$400.00

Forum Fees are assessed to Respondents jointly and severally. Respondents shall receive credit for the \$400 hearing session deposit previously submitted by Claimant, and reimbursed directly to Claimant by Respondents, thus leaving no further assessment due.

DATE

August 4, 1997

CONCURRING ARBITRATORS' SIGNATURES

William H. Malloy, Jr.
William H. Malloy, Jr., Presiding
Public Arbitrator

Elaine A. Sehrt-Green
Elaine A. Sehrt-Green
Public Arbitrator

John P. Rodler
John P. Rodler
Industry Arbitrator

Date Decision Served by NASD Regulation:

August 18, 1997

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DATE

CONCURRING ARBITRATORS' SIGNATURES

August 4, 1997

William H. Malloy, Jr., Presiding
Public Arbitrator

Elaine A. Seht-Green
Elaine A. Seht-Green
Public Arbitrator

John P. Rodler
Industry Arbitrator

Date Decision Served by NASD Regulation:

August 12, 1997

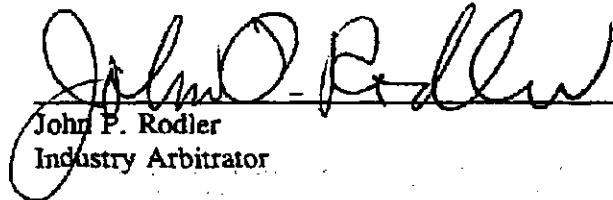
DATE

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William H. Malloy, Jr., Presiding
Public Arbitrator

Elaine A. Sehart-Green
Public Arbitrator

E/4/97


John P. Rodler
Industry Arbitrator

Date Decision Served by NASD Regulation: August 18, 1997