

N.A.S.D. REGULATION, INC. AWARD

NASD Regulation, Inc., Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Shirley Carey

98-00074

Names of Respondents

La Jolla Capital Corporation
Harold Bailey Gallison
Michael Eric Dudley
Gregory Jon Hilsenrath

REPRESENTATION

For Claimant: Morris J. Levin, Esq. of Washington, DC.

For Respondents La Jolla Capital Corporation ("La Jolla") and Harold Bailey Gallison ("Gallison"): Michael T. McColloch, Esq. of Carlsbad, CA.

For Respondent Michael Eric Dudley ("Dudley"): Julie Glass Dudley, Esq. of Towson, MD.

Respondent Gregory Jon Hilsenrath ("Hilsenrath") appeared pro se.

CASE INFORMATION

Statement of Claim filed: January 5, 1998.

Claimant's Submission Agreement signed on: December 23, 1997.

Joint Statement of Answer and Cross-Claim (against Dudley and Hilsenrath) filed by Respondents La Jolla and Gallison on: April 8, 1998.

Respondent La Jolla's Submission Agreement signed on: April 13, 1998 by Christo Kiziroglou on behalf of the firm.

Respondent Gallison's Submission Agreement signed on: April 23, 1998.

Respondents Dudley and Hilsenrath did not file Statements of Answer or properly executed Submission Agreements (see "Other Issues").

HEARING INFORMATION

On June 29, 1998, the arbitration panel conducted a pre-hearing conference which lasted one (1) session.

On October 13, 1998, a hearing lasting two (2) sessions was conducted in Tampa, Florida.

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CASE SUMMARY

Claimant alleged that she is 67 years old and retired; that she was a customer of La Jolla since September, 1994 and that at the urging of Respondents she purchased 70,000 shares of Comparator Systems, Inc. ("Comparator") in late 1994. Claimant next alleged that her brokers told her that they expected the price of Comparator to increase from six (6) cents per share to between \$2.00 and \$5.00 per share and that La Jolla was involved with Comparator. Claimant next alleged that at the suggestion of the Respondents she held on to the Comparator stock while buying and selling other stocks in her portfolio because she expected to make a "killing" on Comparator. Claimant further alleged that on May 3, 1996, without her knowledge or authority or that of her brokers, the branch manager of La Jolla, Daniel E. Boyd, sold Claimant's 70,000 shares of Comparator at nine cents per share; that when Claimant learned of the sale the following Monday, May 6, 1996, she complained to Mr. Boyd, who, in turn, complained to the Chief Executive Officer of La Jolla, Respondent Gallison; that Gallison told Boyd to tell his clients, all of whose shares had been sold without authority, that there were pre-existing sell orders for their Comparator stock. Claimant maintained that the unauthorized sale of her shares of Comparator caused her substantial financial losses.

Respondents La Jolla and Gallison denied the allegations of wrongdoing contained in the Statement of Claim and maintained that La Jolla is a securities broker-dealer licensed and qualified to transact business pursuant to the laws and rules of the Securities and Exchange Commission ("SEC"), the National Association of Securities Dealers ("NASD") and other federal, state and local government agencies; that Respondent Gallison is an owner of La Jolla and a registered representative of the firm but that Gallison was not the broker handling Claimant's account. Respondents La Jolla and Gallison next alleged that in November, 1994, Claimant paid a total of \$4,375.00 to buy 70,000 shares of Comparator, at 6 1/3 cents per share. Respondents further maintained that although they admit that the stock was sold they deny that the sale was unauthorized; and, that the Claimant has not been damaged but in fact made a profit of 44% in eighteen months on the sale of the stock she directed to be sold.

Further, Respondent La Jolla filed a cross-claim against Respondents Dudley and Hilsenrath requesting indemnification and maintained that La Jolla should be held harmless for any losses, claims, damages, awards, and expenses accruing as a result of Dudley's and Hilsenrath's actions.

RELIEF REQUESTED

Claimant requested damages in the amount of \$124,985.00 in lost profits plus \$49,994.00, the amount she would have earned in the market from May, 1996 through January, 1998; exemplary or punitive damages of at least three times the sum of \$174,979.00 (\$124,985.00 + \$49,994.00) due to the reckless and egregious nature of the fraud and breach of fiduciary duties committed by the Respondents; and, attorneys' fees and costs.

Respondents La Jolla and Gallison requested an Award in their favor against the Claimant; costs; expenses, and, such other and further relief deemed proper by the arbitration panel. Further, Respondent La Jolla requested relief on its cross-claim against Dudley and Hilsenrath.

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OTHER ISSUES CONSIDERED & DECIDED

The parties present at the hearing 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 present at the hearing agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc.

Respondents Gallison and Hilsenrath did not attend the hearing. Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators determined that Respondents Gallison and Hilsenrath were properly served with the Statement of Claim pursuant to Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators also determined that Respondents Gallison and Hilsenrath received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondents Dudley and Hilsenrath did not file with the NASD Regulation, Inc., Office of Dispute Resolution, Statements of Answer or properly executed Submission Agreements but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure. Respondent Dudley, having appeared and testified at the hearing, and Hilsenrath, are both bound by the determination of the arbitration panel on all issues submitted.

AWARD

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

1. Respondents Dudley and Hilsenrath are found not liable, and, therefore, all claims against them are hereby dismissed.
2. Respondents La Jolla and Gallison are found liable, jointly and severally, and shall pay to the Claimant the sum of \$98,734.00 plus pre-judgment interest at 10% per annum from May 9, 1996 to October 14, 1998, in the amount of \$23,940.00.
3. Respondents La Jolla and Gallison are found liable, jointly and severally, and shall pay to the Claimant punitive damages in the amount of \$55,000.00 based upon the panel's finding that Respondents La Jolla and Gallison were guilty of fraud and that they intentionally and wrongfully sold Claimant's stock without her consent.
4. Respondent La Jolla's cross-claim is hereby denied.
5. Respondents La Jolla and Gallison are found liable, jointly and severally, and shall pay to the Claimant the sum of \$1,250.00 representing reimbursement of the hearing session deposit of \$1,000.00 and the claim filing fee of 250.00 previously paid by the Claimant to NASD Regulation, Inc.
6. All other claims are hereby denied.

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7. The parties shall each bear their respective costs and expenses incurred in connection with this proceeding, including attorneys' fees.

FORUM FEES

Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10332(c) of the Code, the arbitration panel has assessed forum fees in the amount of \$3,000.00 (one (1) pre-hearing conference (panel) x \$1,000.00 + two (2) hearing sessions x \$1,000.00).

1. Respondents La Jolla and Gallison are assessed forum fees, jointly and severally, in the amount of \$3,000.00 for which NASD Regulation, Inc. shall retain the \$1,000.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. of \$2,000.00.

OTHER FEES

1. Pursuant to Rule 10332 of the Code, the Claimant has paid to NASD Regulation, Inc. the claim filing fee of \$250.00.
2. Pursuant to Rule 10332 of the Code, Respondent La Jolla shall pay to NASD Regulation, Inc. the claim filing fee of \$500.00 for the cross-claim previously invoiced.
3. Pursuant to Rule 10333(a) of the Code, Respondent La Jolla has paid to NASD Regulation, Inc. the member surcharge of \$2,000.00.
4. Pursuant to Rule 10333(d) of the Code, Respondent La Jolla shall pay to NASD Regulation, Inc. the pre-hearing process fee of \$3,500.00 previously invoiced.
5. Pursuant to Rule 10333(d) of the Code, Respondent La Jolla shall pay to NASD Regulation, Inc. the pre-hearing process fee of \$600.00 previously invoiced.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/
William B. Nodine, Esq.

Public/Chairperson

/s/
James A. Cormack

Public/Panelist

/s/
James Joseph Woodcock

Industry/Panelist

Date of Decision: December 17, 1998