

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

John F. Schubert and Victoria A. Schubert, Claimants v. Dennis Fitz Dixon, Mark David Hovland, Kory Robert Kemp, Simmons & Bishop Co., Inc. and Evelyn Kottle Simmons, Respondents v. Robert B. Ravenscroft, Third-Party Respondent

Case Number: 00-03452

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

For Claimants:

Howard M. Hoffman, Esq.
Melinda Steuer, Esq.
Law Offices of Howard M. Hoffman
Sacramento, California

For Respondent Dennis Fitz Dixon:

Dennis Fitz Dixon
In Propria Persona
Mesa, Arizona

For Respondent Kory Robert Kemp:

Kory Robert Kemp
In Propria Persona
Tempe, Arizona

For Respondent Simmons & Bishop Co., Inc.:

Simmons & Bishop Co., Inc.
Scottsdale, Arizona

For Respondent Evelyn Simmons:

Daniel B. Spitzer, Esq.
Law Offices of Daniel B. Spitzer
Encino, California

For Third-Party Respondent Robert B. Ravenscroft:

Howard M. Hoffman, Esq.
Law Offices of Howard M. Hoffman
Sacramento, California

CASE INFORMATION

Statement of Claim filed: August 10, 2000

Claimants' Joint Uniform Submission Agreement signed: May 9, 2000

Joint Statement of Answer by Respondents and Counterclaim by Respondent Simmons & Bishop Co., Inc. filed: October 17, 2000

Claimants' Joint Response to Respondent Simmons & Bishop Co., Inc.'s Counterclaim filed: November 28, 2000

Statement of Third-Party Claim filed by Respondent Simmons & Bishop: October 17, 2000

Answer to Third-Party Claim filed by Third-Party Respondent Robert B. Ravenscroft: November 28, 2000

Respondent Dennis Fitz Dixon's Uniform Submission Agreement signed: October 13, 2000

Respondent Mark David Hovland's Uniform Submission Agreement signed: October 13, 2000

Respondent Kory Robert Kemp's Uniform Submission Agreement signed: None filed

Respondent Simmons & Bishop Co., Inc.'s Uniform Submission Agreement signed: October 13, 2000

Respondent Evelyn Kottle Simmons's Uniform Submission Agreement signed: October 13, 2000

CASE SUMMARY

Claimants alleged negligent and intentional breach of duty, suitability, negligent and intentional churning, negligent and intentional unauthorized trading, and failure to supervise. The case involved unspecified securities.

In their Answer, Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim. In its Counterclaim, Respondent Simmons & Bishop Co., Inc. alleged breach of implied duty of good faith, fraud, negligent misrepresentation and promissory estoppel.

Claimants denied the allegations of wrongdoing set forth in Respondent Simmons & Bishop Co., Inc.'s Counterclaim.

In its Third-Party Claim against Third-Party Respondent Robert B. Ravenscroft, Respondent Simmons & Bishop Co., Inc. sought indemnity.

Third-Party Respondent Robert B. Ravenscroft denied the allegations of wrongdoing set for in Respondent Simmons & Bishop Co., Inc.'s Third-Party Claim.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested unspecified compensatory damages, unspecified punitive damages, and costs, including attorney's fees.

In their Answer Respondents requested dismissal of the Claimants' Statement of Claim in its entirety. In its Counterclaim, Respondent Simmons & Bishop Co., Inc.'s requested indemnity, punitive damages, interest, and costs, including attorney's fees.

In their Answer to the Counterclaim, Claimants requested dismissal of the Counterclaim and costs, including attorney's fees.

In its Third-Party Claim, Respondent Simmons & Bishop Co., Inc. requested indemnity and costs, including attorney's fees.

In his Answer to the Third-Party Claim, Third-Party Respondent requested dismissal of the Third-Party Claim and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Kory Robert Kemp did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, is bound by the determination of the Panel on all issues submitted.

On March 15, 2002, Claimants notified NASD Dispute Resolution of the bankruptcy of Mark David Hovland. Accordingly, this matter is stayed as to Respondent Mark David Hovland.

Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned Panel determined that Respondents Dennis Fitz Dixon, Kory Robert Kemp, and Simmons & Bishop Co., Inc. were properly served with the Statement of Claim and filed an

Answer to the Statement of Claim, and that Respondents Dennis Fitz Dixon and Simmons & Bishop Co., Inc. filed Uniform Submission Agreements. Accordingly, the arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

At the hearing session held on September 10, 2001, Claimants and Respondent Evelyn Simmons notified the Panel that they had reached a settlement. Respondent Evelyn Simmons stipulated that if the settlement was not paid by October 7, 2001, the Panel may enter an award of \$72,600.00 against her. The Panel adjourned the proceedings to be continued at a later time with the remaining Respondents.

On September 9, 2002, Claimants filed a document entitled Motion to Enter Award Against Respondent Evelyn Simmons Pursuant to Settlement. On October 4, 2003, a telephonic hearing was held, attended by counsel for Claimants, counsel for Respondent Evelyn Simmons and the Panel. After due deliberation in an executive session, the Panel granted the motion.

On February 24, 2003, the Panel held a telephonic hearing attended by counsel for Claimants and counsel for Respondent Evelyn Simmons. The Panel ruled as follows:

1. Respondent Evelyn Simmons is liable to and shall pay Claimants the sum of \$72,600.00 in compensatory damages.
2. The Counterclaims of Simmons & Bishop Co., Inc. against John & Victoria Schubert is dismissed with prejudice.
3. The Third-Party Claim of Simmons & Bishop Co., Inc. against Robert B. Ravenscroft is dismissed with prejudice.
4. All remaining issues and claims will be heard and resolved at the evidentiary hearing on April 3, 2003 at 10:00 a.m.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing on April 3, 2003, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Dennis Fitz Dixon and Kory Robert Kemp are jointly and severally liable to and shall pay Claimants the sum of \$82,400.00 in compensatory damages.
2. Respondent Evelyn Simmons is liable to and shall pay claimants the sum of \$72,600.00 in compensatory damages.
3. In the event that Eveyln Simmons defaults on her payment of any balance of the award of \$72,600.00, Respondents Dennis Fitz Dixon and Kory Robert Kemp are jointly and severally liable to and shall pay Claimants the remaining amount owed with respect to the Award set forth in the paragraph 2 above.
5. The Counterclaims of Simmons & Bishop Co., Inc. against John & Victoria Schubert is dismissed with prejudice.
4. The Third-Party Claim of Simmons & Bishop Co., Inc. against Robert B. Ravenscroft is dismissed with prejudice.
5. The parties shall bear their respective costs, including attorney's fees.
6. All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 250.00
Respondent Simmons & Bishop Co., Inc's Third-Party Claim Filing Fee	= \$ 500.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Simmons & Bishop & Co., Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,200.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 2,000.00
Total Member Fees	= \$ 3,800.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Three (3) Pre-hearing conference sessions with a single Arbitrator @ \$450.00/session = \$ 1,350.00

Pre-hearing conferences:	June 25, 2001	1 session
	June 28, 2001	1 session
	August 9, 2001	1 session

Six (6) Pre-hearing conference sessions with the Panel @ \$1,000.00/session = \$ 6,000.00

Pre-hearing conferences:	May 14, 2001	1 session
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	February 24, 2003	1 session

Three (3) Hearing sessions @ \$1,000.00/session = \$ 3,000.00

Hearings: September 10, 2001 1 session
 April 3, 2003 2 sessions

Total Forum Fees = **\$10,350.00**

1. The Panel assessed \$8,350.00 of the forum fees jointly and severally to Respondents Dennis Fitz Dixon, Kory Robert Kemp, Simmons & Bishop Co., Inc. and Evelyn Kottle Simmons.
2. The Panel assessed \$2,000.00 of the forum fees jointly and severally to Respondents Dennis Fitz Dixon and Kory Robert Kemp.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimants requested copies of tapes: = \$ 15.00

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Administrative Costs</u>	= \$ 15.00
Total Fees	= \$ 265.00
<u>Less payments</u>	= \$(1,265.00)
Refund Due from NASD Dispute Resolution	= \$(1,000.00)

2. Respondents Dennis Fitz Dixon, Kory Robert Kemp, Simmons & Bishop Co., Inc. and Evelyn Kottle Simmons are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 8,350.00
<u>Less payments</u>	= \$(1,000.00)
Balance Due NASD Dispute Resolution	= \$ 7,350.00

3. Respondent Simmons & Bishop Co., Inc. is charged with the following fees and costs:

Third-Party Claim Filing Fee	= \$ 500.00
<u>Member Fees</u>	= \$ 3,800.00
Total Fees	= \$ 4,300.00
<u>Less payments</u>	= \$(3,700.00)
Balance Due NASD Dispute Resolution	= \$ 600.00

4. Respondents Dennis Fitz Dixon and Kory Robert Kemp are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 2,000.00
<u>Less payments</u>	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 2,000.00

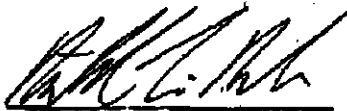
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Richard L. Rubin, Esq.
Barry S. Willdorf, Esq.
Kurt H. Berner

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures



Richard L. Rubin, Esq.
Chair, Public Arbitrator

4/22/03
Signature Date

Barry S. Willdorf, Esq.
Public Arbitrator

Signature Date

Kurt H. Berner
Non-Public Arbitrator

Signature Date

4/24/03
Date of Service

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Kurt H. Benner

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- **Public Arbitrator**
- **Non-Public Arbitrator**

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In the Matter of the Arbitration Between:

John F. Schubert and Victoria A. Schubert, Claimants v. Dennis Fitz Dixon, Mark David Hovland, Kory Robert Kemp, Simmons & Bishop Co., Inc. and Evelyn Kottle Simmons, Respondents v. Robert B. Ravenscroft, Third-Party Respondent

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For Claimants:

**Howard M. Hoffman, Esq.
Melinda Steuer, Esq.
Law Offices of Howard M. Hoffman
Sacramento, California**

For Respondent Dennis Fitz Dixon:

**Dennis Fitz Dixon
In Propria Persona
Mesa, Arizona**

For Respondent Kory Robert Kemp:

**Kory Robert Kemp
In Propria Persona
Tempe, Arizona**

For Respondent Simmons & Bishop Co., Inc.:

**Simmons & Bishop Co., Inc.
Scottsdale, Arizona**

For Respondent Evelyn Simmons:

**Daniel B. Spitzer, Esq.
Law Offices of Daniel B. Spitzer
Encino, California**

For Third-Party Respondent Robert B. Ravenscroft:

**Howard M. Hoffman, Esq.
Law Offices of Howard M. Hoffman
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CASE INFORMATION

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In their Answer Respondents requested dismissal of the Claimants' Statement of Claim in its entirety. In its Counterclaim, Respondent Simmons & Bishop Co., Inc.'s requested indemnity, punitive damages, interest, and costs, including attorney's fees.

In their Answer to the Counterclaim, Claimants requested dismissal of the Counterclaim and costs, including attorney's fees.

In its Third-Party Claim, Respondent Simmons & Bishop Co., Inc. requested indemnity and costs, including attorney's fees.

In his Answer to the Third-Party Claim, Third-Party Respondent requested dismissal of the Third-Party Claim and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Kory Robert Kemp did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, is bound by the determination of the Panel on all issues submitted.

On March 15, 2002, Claimants notified NASD Dispute Resolution of the bankruptcy of Mark David Hovland. Accordingly, this matter is stayed as to Respondent Mark David Hovland.

Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned Panel determined that Respondents Dennis Fitz Dixon, Kory Robert Kemp, and Simmons & Bishop Co., Inc. were properly served with the Statement of Claim and filed an

Answer to the Statement of Claim, and that Respondents Dennis Fitz Dixon and Simmons & Bishop Co., Inc. filed Uniform Submission Agreements. Accordingly, the arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

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4. All remaining issues and claims will be heard and resolved at the evidentiary hearing on April 3, 2003 at 10:00 a.m.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing on April 3, 2003, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Dennis Fitz Dixon and Kory Robert Kemp are jointly and severally liable to and shall pay Claimants the sum of \$82,400.00 in compensatory damages.
2. Respondent Evelyn Simmons is liable to and shall pay claimants the sum of \$72,600.00 in compensatory damages.
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5. The Counterclaims of Simmons & Bishop Co., Inc. against John & Victoria Schubert is dismissed with prejudice.
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5. The parties shall bear their respective costs, including attorney's fees.
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Member Surcharge	= \$ 1,200.00
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2. The Panel assessed \$2,000.00 of the forum fees jointly and severally to Respondents Dennis Fitz Dixon and Kory Robert Kemp.

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Balance Due NASD Dispute Resolution	= \$ 7,350.00

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<u>Less payments</u>	= \$(3,700.00)
Balance Due NASD Dispute Resolution	= \$ 600.00

4. Respondents Dennis Fitz Dixon and Kory Robert Kemp are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 2,000.00
<u>Less payments</u>	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 2,000.00

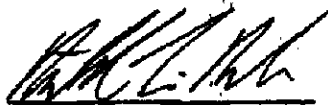
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ARBITRATION PANEL

Richard L. Rubin, Esq.
Barry S. Willdorf, Esq.
Kurt H. Benner

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures



Richard L. Rubin, Esq.
Chair, Public Arbitrator

4/22/03

Signature Date

Barry S. Willdorf, Esq.
Public Arbitrator

Signature Date

Kurt H. Benner
Non-Public Arbitrator

Signature Date

4/29/03

Date of Service

ARBITRATION PANEL

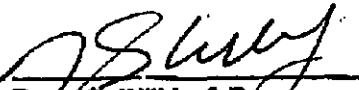
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4-22-03
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Signature Date

4/24/03
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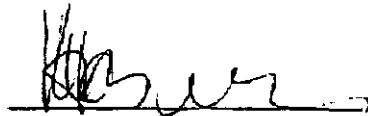
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Richard L. Rubin, Esq.
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Barry S. Willdorf, Esq.
Public Arbitrator

Signature Date



Kurt H. Benner
Non-Public Arbitrator

4/28/03
Signature Date