

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Robert E. Ravenscroft, Claimant v. Dennis Fitz Dixon, Simmons & Bishop Co., Inc., Evelyn Kottle Simmons, Kory Robert Kemp and Mark David Hovland, Respondents.

Case Number: 00-04129

Hearing Site: San Francisco, CA

REPRESENTATION OF PARTIES

For Claimants:

Howard M. Hoffman, Esq.
8880 Cal Center Drive
Suite 165
Sacramento, CA 95826

For Respondents:

Jeanne M. Rowzee, Esq.
92 Corporate Park
Suite C203
Irvine, CA 92606

CASE INFORMATION

Statement of Claim filed: September 21, 2000

Claimant's Uniform Submission Agreement signed: May 9, 2000

Statement of Answer and Counterclaim filed by Respondents: November 16, 2000

Respondent s Dennis Fitz Dixon, Simmons & Bishop Co., Inc., Evelyn Kottle Simmons and Mark David Hovland's Uniform Submission Agreement signed: November 13, 2000

Respondent Kory Robert Kemp did not file a Uniform Submission Agreement

Statement of Answer to the Counterclaim filed by Claimant/Counter-Respondent: December 20, 2000

CASE SUMMARY

Claimant alleged intentional breach of fiduciary duty; negligent breach of fiduciary duty; lack of suitability; churning; intentional unauthorized trading; negligent unauthorized trading and failure to supervise. The claims stem from alleged losses in two accounts that Claimant held with Respondent Simmons & Bishop Co., Inc.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim. The Respondents asserted several affirmative defenses, including that Respondents discharged their duties to Claimant; Claimant initiated and approved the transactions at issue; Claimant failed to state a claim upon which relief could be granted; the alleged damages were the result of Claimant's own negligence and that the claims were barred by the applicable statute of limitations.

In its Counterclaim, Respondent Simmons & Bishop Co., Inc. alleged that Claimant was responsible for and should pay an outstanding debit balance. Respondent Simmons & Bishop Co., Inc. further alleged breach of contract; breach of implied duty of good faith; indemnity; negligent misrepresentation and fraud.

Claimant denied each of the claims set forth against him in the Counterclaim.

RELIEF REQUESTED

Claimant requested unspecified compensatory damages, including out of pocket losses, pre-judgment interest and lost opportunity costs; unspecified punitive damages; reasonable attorneys' fees; costs of the action and such further relief as the Panel deemed just and proper.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety. In its counterclaim, Respondent Simmons & Bishop Co., Inc. also requested an order directing Claimant to indemnify Respondents for the action; unspecified damages equal to the fees, costs and expenses incurred; margin interest; reasonable attorneys' fees and costs to bring the Counterclaim; unspecified punitive damages; pre-judgment and post-judgment interest and such other relief as the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

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, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents are jointly and severally liable to and shall pay Claimant compensatory

damages in the amount of \$1,085,000.

- 2) Respondents are jointly and severally liable to and shall pay Claimant interest on the amounts due to Claimant in compensatory damages. Interest shall accrue at seven percent annually beginning on September 15, 2000, and ending when the award is paid in full.
- 3) Respondents Dennis Fitz Dixon, Kory Robert Kemp and Mark David Hovland shall pay Claimant sanctions in the amount of \$1000 for their failure to appear at the hearing despite Notices to Appear at Arbitration having been served on their attorney Jeanne Rowzee on July 26, 2001.
- 4) Respondent Simmons & Bishop Co., Inc.'s counterclaim is dismissed with prejudice.
- 5) Each party shall bear its own costs, including attorney's fees.
- 6) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 250
Respondents' Counterclaim	= \$ 500

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 is a party and the following fees are assessed:

Member Surcharge	= \$1200
Pre-Hearing Process Fee	= \$ 600
<u>Hearing Process Fee</u>	= \$2000
Total Member Fees	= \$3800

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/Panel. The following fees are assessed:

5 Pre-hearing conference sessions with a single arbitrator @ \$450/session	= \$2250
Pre-hearing conferences:	
July 23, 2001	1 session
July 24, 2001	1 session
July 30, 2001	1 session
August 3, 2001	1 session
August 9, 2001	1 session

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2 Pre-hearing conference sessions with the Panel @ \$1000/session	= \$2000
Pre-hearing conference(s): April 5, 2001	1 session
May 24, 2001	1 session

6 Hearing sessions @ \$1000/session	= \$6000
Hearings: August 20, 2001	2 sessions
August 21, 2001	2 sessions
August 22, 2001	2 sessions

Total Forum Fees	= \$10,250
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1. The Panel assessed \$3500 of the forum fees to Claimant.
2. The Panel assessed \$6750 of the forum fees jointly and severally to Respondents.

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 other requests.

Claimant, reproduction of audiocassettes	= \$ 165
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Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 250
Forum Fees	= \$3500
<u>Administrative Costs</u>	<u>= \$ 165</u>
Total Fees	= \$3915
<u>Less Payments</u>	<u>= \$(1415)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2500

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

Counterclaim Filing Fee	= \$ 500
<u>Member Fees</u>	<u>= \$3800</u>
Total Fees	= \$4300
<u>Less Payments</u>	<u>= \$(5300)</u>
Remaining Balance applied to Forum Fees	= \$(1000)

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

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Forum Fees	= \$6750
Total Fees	= \$6750
Remaining Balance paid by Respondent Simmons & Bishop Co., Inc.	= \$(1000)
Balance Due NASD Dispute Resolution, Inc.	= \$5750

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

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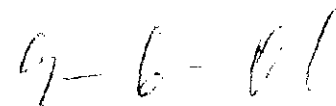
ARBITRATION PANEL

William Ziering, Esq.	-	Public, Presiding Chair
Charles B. Stark, Jr.	-	Public Arbitrator
Mark R. Palmer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



William Ziering, Esq.
Chair, Public Arbitrator



Signature Date

Charles B. Stark, Jr.
Public Arbitrator

Signature Date

Mark R. Palmer
Non-Public Arbitrator

Signature Date

Date Served:

SEP 10 2001

Date of Service

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Mark R. Palmer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

William Ziering, Esq.
Chair, Public Arbitrator

Signature Date

Charles B. Stark, Jr.
Charles B. Stark, Jr.
Public Arbitrator

9/6/01
Signature Date

Mark R. Palmer
Non-Public Arbitrator

Signature Date

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William Ziering, Esq.
Chair, Public Arbitrator

Signature Date

Charles B. Stark, Jr.
Public Arbitrator

Signature Date

Mark Palmer
Mark R. Palmer
Non-Public Arbitrator

9-7-01
Signature Date

Date Served:

SEP 10 2001

Date of Service