

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Patricia A. Bennett

91-00797

Name of Respondents

R.G. Dickinson & Co., Inc. and
Kim Milhollan

REPRESENTATION OF PARTIES

Claimant was represented by Scott W. Johnson, Esq. of Johnson & Johnson, Colorado Springs, Colorado.

Respondent were represented by James R. Miller, Esq. and Russell C. Burk, Esq. of Hopper and Kanouff, P.C., Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about March 13, 1991.

Claimant's Submission Agreement signed on March 5, 1991.

Statement of Answer filed by Respondents, R.G. Dickinson & Co., Inc. and Kim Milhollan on or about May 23, 1991.

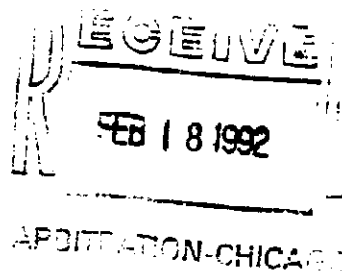
Amended Statement of Answer filed on or about January 28, 1992.

Respondent R.G. Dickinson & Co., Inc.'s Submission Agreement signed on May 14, 1991 by Robert L. Cram.

Respondent Kim Milhollan's Submission Agreement signed on April 1, 1991.

HEARING INFORMATION

Pre-hearing conferences were held on Thursday, November 7, 1991 with Daniel C. Himelsbach, Esq. and Eugene Osman present lasting one (1) session and on Friday, January 24, 1992 with Daniel C. Himelsbach, Esq. presiding lasting



one (1) session.

The hearing was held on Tuesday, January 28, 1992 for two (2) sessions, Wednesday, January 29, 1992 for two (2) sessions and Monday, February 3, 1992 for three (3) sessions in Denver, Colorado for a total of seven (7) sessions and two (2) pre-hearing sessions.

CASE SUMMARY

Claimant alleged that Respondents Kim Milhollan and R.G. Dickinson & Co., Inc. (collectively as "Respondents") gave unsuitable investment advice and placed the Claimant in an unsuitable investment scheme. Claimant alleged that the sales of Tribune Co. stock and subsequent purchases of ALC Communications Pfd., Pharmacontrol Corp., Tenant, Treasury Receipts, and Eaton Vance, a mutual fund, were unsuitable for her. Claimant specifically alleged that Respondents breached their fiduciary duty and trust, were negligent by failing to exercise reasonable care in the advice given to the Claimant, engaged in churning of the Claimant's account, and engaged in constructive fraud. Claimant further alleged that R.G. Dickinson & Co., Inc. failed to exercise reasonable care in control and supervision of Respondent Milhollan.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that Respondent Milhollan advised Claimant to diversify her portfolio. When the account was opened at R.G. Dickinson the Claimant had a large portion of her portfolio in Tribune Co. stock. Respondent Milhollan advised the Claimant to liquidate portions of those holdings to diversify her portfolio and to pay anticipated tax liability of the Claimant. Respondents further stated that the subsequent purchases in the accounts of Claimant were consistent with the stated investment objectives for each of those accounts and consistent with the discussions of diversification between Respondent Milhollan and Claimant. Respondents stated that each transaction was discussed with and authorized by the Claimant.

In their Amended Statement of Answer, Respondents asserted the following affirmative defenses: the claims are barred by the doctrines of estoppel, waiver, ratification, and comparative negligence; that punitive damages are not recoverable under Colorado statute (Section 13-21-102(5), C.R.S.).

RELIEF REQUESTED

Claimant requested an award in the amount of \$150,960.00, interest, costs, attorney's fees, loss of profits incurred and unspecified exemplary damages.

Respondents requested that the Statement of Claim be dismissed in its entirety and that forum fees and their attorney's fees be assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Respondents' Amended Answer previously filed with the NASD on or about November 12, 1991 was accepted without objection by the panel at the commencement of the hearing.

The Motion to Dismiss claims asserted against Respondent R.G. Dickinson & Co., Inc. was considered by the panel. After considering the arguments presented on behalf of the parties, the panel took the motion under advisement and reminded Respondent's counsel to reassert the motion at the conclusion of the hearing.

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 original(s) remain on file with the NASD.

AWARD

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

1. Respondent R.G. Dickinson & Co., Inc. shall be and hereby is liable for and shall pay to the Claimant Patricia Bennett the sum of \$13,723.00 (Thirteen Thousand Seven Hundred Twenty Three Dollars) for its failure to supervise Kim Milhollan in making unsuitable trades in Ms. Bennett's IRA account.
2. The claims asserted against Kim Milhollan shall be and hereby are dismissed and denied in their entirety.
3. No punitive damages are awarded herein.
4. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant as forum fees. Claimant shall pay to the NASD the sum of \$2,400.00 and Respondent R.G. Dickinson & Co., Inc. shall pay to the NASD the sum of \$3,150.00 as forum fees.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference presided over by a single arbitrator. The pre-hearing conference conducted on November 7, 1991 is charged at the full session rate of \$750.00 and the pre-hearing conducted on January 24,

1992 is charged at the pre-hearing session rate of \$300.00.

The NASD shall retain postponement fees previously deposited with the NASD by the parties, if any. No additional postponement fees are assessed.


Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

Daniel C. Himelsoch, Esq.
Presiding Chair
Public Arbitrator

Vincent P. Fitzgerald
Public Arbitrator

Feb 10, 1992


Eugene M. Ocan
Industry Arbitrator

1992 is charged at the pre-hearing session rate of \$300.00.

The NASD shall retain postponement fees previously deposited with the NASD by the parties, if any. No additional postponement fees are assessed.

Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

February 6, 1992

Daniel C. Himelsoch

Daniel C. Himelsoch, Esq.
Presiding Chair
Public Arbitrator

Vincent P. Fitzgerald
Public Arbitrator

Eugene M. Oenan
Industry Arbitrator

FEB 10 1992

REGISTRATION-CHICAGO

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Daniel C. Himelspanch, Esq.
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Public Arbitrator


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Industry Arbitrator