

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Maria Misol, as Custodian for  
Helen Misol, Elizabeth Misol,  
Carmen Misol and Adrian Misol

91-01042

Name of Respondent(s)

R.G. Dickinson & Co.  
Bill Goodwin

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REPRESENTATION

For Claimant: Maria Misol, as Custodian for Helen Misol, Elizabeth Misol, Carmen Misol and Adrian Misol were represented by John D. Hudson, Esq. of Carney, Hudson, Williams, Blackburn & Grask, Des Moines, Iowa.

For Respondents: R. G. Dickinson & Co. and Bill Goodwin were represented by James C. Fifield, Esq. of Duncan, Jones, Riley & Finley, P.C., Des Moines, Iowa.

CASE INFORMATION

Statement of Claim filed: April 4, 1991

Claimant Maria Misol's Submission Agreement signed individually and as custodian for Helen Misol on: March 28, 1991

Claimant Elizabeth Misol's Submission Agreement signed on: March 21, 1991

Claimant Carmen Misol's Submission Agreement signed on: March 26, 1991

Claimant Adrian Misol's Submission Agreement signed on: March 26, 1991

Joint Statement of Answer filed by Respondents R.G. Dickinson & Co. and Bill Goodwin on: August 13, 1991

Respondent R.G. Dickinson & Co.'s Submission Agreement signed on: August 8, 1991 by Joseph J. Bustin as Chief Operating Officer, R.G. Dickinson & Co.  
Respondent Bill Goodwin's Submission Agreement signed on: August 6, 1991

#### HEARING INFORMATION

Pre-Hearing Conference: None Held

Hearing Date/Sessions: January 8, 1992 for two (2) sessions

Hearing Location: Omaha, Nebraska

#### CASE SUMMARY

Claimant Maria Misol, as custodian for Helen Misol, Elizabeth Misol, Carmen Misol and Adrian Misol ("Misol") alleged that Respondent Bill Goodwin ("Goodwin"), while employed by or acting as an agent for Respondent R.G. Dickinson & Co. ("RGD"), invested the educational funds of her children in closed end junk bond funds and speculative zero coupon corporate securities which were unsuitable given the known financial objectives of Misol and the explicit instructions to Goodwin that risk could not be tolerated, in total disregard of NYSE Rule 405 and Section 2 of the NASD rules of Fair Practice. In addition, Misol alleged that:

1. Goodwin was negligent in his investment advise by recommending the securities that he did;
2. Goodwin failed to diversify the portfolios of his clients in order to obtain larger commissions;
3. Goodwin failed to disclose to Misol the enhanced risk associated with junk bonds and of closed end mutual funds where the market price will be at a premium or discount to the net asset value of the underlying bonds, and that the First Boston Strategic Income Fund was a new issue with no track record and the commissions were 7% of the purchase;
4. Goodwin failed to provide Misol with prospectuses for the various funds or to advise her of the substantial commissions associated with closed end mutual funds;
5. Goodwin falsely represented to Misol that an 11 per cent rate of return was guaranteed for the life of the investments; and
6. Goodwin violated his duty of care in the handling of these accounts pursuant to the Uniform Transfer to Minors Act (Chapter 565B, The Code).

Respondents RGD and Goodwin denied the material allegations of the Statement of Claim, alleging that:

1. Misol identified the need of her children to use the accounts to pay for all of their anticipated college education and that the value of the accounts had been harmed by the October 1987 crash prior to the accounts transfer to RGD, but never told Goodwin that further risk could not be tolerated;
2. The various investment strategies were thoroughly discussed with Misol, who realized that lower yielding bonds, while safer, would not cover the anticipated college expenses;
3. On Goodwin's recommendation, Misol made the decision to invest in high yield funds, rather than in individual high yield bonds, which allowed Misol to spread the risk and diversify her Children's investments;
4. All the challenged fund purchases were in the secondary market, and therefore, the delivery of a prospectus was not required and the commissions received were substantially smaller;
5. Respondents should not be held responsible for the unforeseeable collapse of the high yield bond market;
6. Cash disbursements to or for benefit of the Misol children were made out of the accounts, dividends have been received and/or reinvested at the funds, certain funds were sold, several of the zero coupon bonds or money multiplier notes matured at par and none have been defaulted on, and the single non-matured zero coupon bond purchased May 17, 1988 at 81 traded as of August 6, 1991 at 91.5;
7. RGD is not a member of the NYSE and is not subject to any requirement of Rule 404, and while subject to the Rules of Fair Practice of the NASD, the NASD rules do not provide a private right of action;
8. The Uniform Transfer to Minors Act (Chapter 565B, The Code) applies to the custodian and the duties imposed are those owed by Misol (not RGD or Goodwin) to her children; and
9. Any claims for alleged violations of Rule 10b-5 of the Securities Act of 1934 are barred by the statute of limitations.

#### RELIEF REQUESTED

Claimants Misol requested the rescission of the transactions made in the childrens' accounts in exchange for the original investment (approximately \$100,000.00) plus interest, minus distributions, plus attorneys' fees and the costs of the action.

Respondents RGD and Goodwin requested that the statement of claim be dismissed and for an award of costs and attorneys' fees against Misol.

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.

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. Respondents R.G. Dickinson & Co. and Bill Goodwin are jointly and severally liable for and shall pay to claimants the total sum of \$35,000.00 to be specifically awarded to the particular claimants as follows:
  - a. Maria Misol, as Custodian for Elizabeth Misol, and Elizabeth Misol, the sum of \$5,833.33;
  - b. Maria Misol, as Custodian for Helen Misol, and Helen Misol, the sum of \$11,666.67;
  - c. Maria Misol, as Custodian for Carmen Misol, and Carmen Misol, the sum of \$5,833.33; and
  - d. Maria Misol, as Custodian for Adrian Misol, and Adrian Misol, the sum of \$11,666.67;
2. The arbitrators specifically hold that only the Zenith Income Fund, Inc. and the New America High Yield Fund were unsuitable and, furthermore, that damages ceased to accrue in 1990 when the Claimant complained to the regulatory agency;
3. In addition, the arbitrators specifically hold that no evidence was presented to substantiate the allegations of churning or other activity precipitated for the purpose of generating unreasonable or excessive commissions;
4. No interest shall accrue on this award if satisfied within 30 days from the Respondents' receipt of a copy of this award; and
5. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following total Forum Fees are assessed: Two (2) sessions x \$750.00 = \$1,500.00.

The National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$200.00 and the hearing session deposit of \$750.00 previously deposited by the Claimants. Respondents R.G. Dickinson & Co. and Bill Goodwin are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$750.00.

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

CONCURRING ARBITRATORS' SIGNATURES

Name:

Date:

Sam Brower

February 26, 1992

Sam Brower, Esq.  
Public Arbitrator  
Chairperson

Norman Veitzer

February 27, 1992

Norman Veitzer  
Public Arbitrator

Bruce E. Haney

February 26, 1992

Bruce E. Haney  
Industry Arbitrator

Service Date of Decision: March 3, 1992