

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Diana Pagel

No. 91-02200

Name of Respondents

R.G. Dickenson & Co.  
Allied Group Securities Corporation  
Michael Nixon

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REPRESENTATION OF PARTIES

For Claimants: Gail E. Boliver, Esq of Boliver Law Firm,  
Marshalltown, Iowa.

For Respondents: David W. Dunn, Esq. of Davis, Hockenberg, Wine,  
Brown, Koehn & Shors, P.C., Des Moines, Iowa.

CASE INFORMATION

Statement of Claim filed: July 17, 1991.

Claimants' Submission Agreement signed on: July 30, 1991.

Statement of Answer filed by Respondents, R.G. Dickenson & Co.  
and Michael Nixon on: September 26, 1991.

Respondent R. G. Dickenson & Co.'s Submission Agreement signed  
on: September 25, 1991.

Respondent Michael Nixon's Submission Agreement signed on:  
September 25, 1991.

Statement of Answer filed by Respondent, Allied Capital Group on:  
December 19, 1991.

Respondent Allied Capital Group's Submission Agreement signed on:  
December 12, 1992.

Special Appearance of Allied Group Securities Corporation filed:  
on or about September 26, 1991.

### HEARING INFORMATION

Hearing dates: March 31, 1992. Two (2) Sessions.  
April 1, 1992. Two (2) sessions.  
April 2, 1992. One (1) session.

Hearing Location: Omaha, Nebraska.

### CASE SUMMARY

Claimant Diana Pagel ("Claimant") alleged: Failure to supervise; breach of fiduciary duty; unsuitability; churning; violation of the Securities Exchange Act of 1934; and violation of the Iowa Uniform Securities Act Section 502 by respondents Michael Nixon ("Nixon"), R.G. Dickenson & Co. ("RGD"), and Allied Group Securities Corporation ("AGSC"). Claimants allegations arose out of transactions in the following securities: E. F. Hutton HIS Series Bond & Income mutual fund; Lord Bond Debenture Fund; Florida Power & Light Co. First Mortgage Bond; Citicorp Sinking Fund Debentures; Houston Light & Power Company First Mortgage Bonds; Massachusetts Electric Co. First Mortgage SER 0; Southwestern Public Service Co. First Mortgage Bond; Reynolds R J INDS Sinking Fund Debentures; United TEL Co. of Florida First Mortgage SER X; and EFH CIT 6 HI-Yield.

Claimant, a widow, alleged that she and her husband Merl Pagel ("Merl") originally employed Nixon to invest their retirement assets. An account was alleged to have been opened with E.F. Hutton through Nixon. Claimant alleged stressing to Nixon that safety of the principal, income and growth were important. Claimant also alleged that she and her husband were inexperienced investors, and totally relied upon Nixon for the prudent investment of their funds. Claimant was allegedly never informed as to the risks of her investments at any time relevant to this case. Moreover, Claimant alleged that when Nixon changed his employment to AGSC from RGD in March of 1987, Nixon made transactions which degraded the quality and composition of Claimant's portfolio. In particular, Claimant alleged that Nixon put her and her husband's funds into closed-end funds, and that Nixon always represented to her that the total value of the original assets were intact. These activities were alleged by Claimant to be intentional, reckless, wanton and in utter disregard for Claimant's interest.

In their Statement of Answer, Nixon and RGD denied each and every material allegation contained in the Statement of CLaim. Nixon and RGD alleged that the only purchase made while Nixon was with RGD was the investment of \$14,000.00 in Mid-America High Yield Fund. In addition, Nixon and RGD asserted the following affirmative defenses:

1. Claimant's cause of action is barred by the applicable

statute of limitations.

2. Claimant has, since the date of the first investment in June of 1986, enjoyed the fruits of her investment in the form of the income stream derived therefrom. Claimant remains invested in seven mutual funds, most of them since 1988. By her conduct, Claimant has ratified all investments and cannot now be heard to complain thereof.

3. Any decline in the value of Claimant's account was caused by market forces, including without limitation the crash of October 1987, and the crisis of confidence in corporate bonds commencing in 1989 and was not the result of any alleged misrepresentations.

For its Statement of Answer, AGSC denied each and every material allegation contained in the Statement on Claim. In addition, AGSC asserted the affirmative defenses previously set forth in the Answer of RGD and Nixon.

#### RELIEF REQUESTED

Claimant requested an award in excess of \$179,318.00, plus interest, plus commissions, plus attorney's fees, costs of this action, punitive damages in the amount of \$300,000.00, and other remedies as provided by law.

Respondents Nixon and RGD requested that Claimant's claim be dismissed at Claimant's cost.

Respondent AGSC requested that Claimant's claim be dismissed at Claimant's cost.

#### OTHER ISSUES CONSIDERED & DECIDED

On August 26, 1991, Allied Group Insurance filed a letter opposing the jurisdiction of the NASD alleging that Allied Group Securities Corporation was no longer a member of the NASD, and that Allied Group Securities Corporation had been dissolved. On August 27, 1991, the Director of Arbitration ordered Allied Group Securities Corporation to file a Statement of Answer in

accordance with Section 25 (b) of the Code of Arbitration.

Respondent Allied Group Securities Corporation did not appear at the hearing. Allied Group Securities Corporation filed a Submission to Arbitration and an Answer to the claim. However, Allied Group Securities Corporation was represented by counsel. Respondent Allied Group Securities Corporation shall be bound by the determination of the arbitration panel.

The parties have agreed that the Award in this matter may be executed by 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant, Diana Pagel's claims against Respondent R.G. Dickenson & Co. are hereby denied and dismissed with prejudice.
2. Respondents, Allied Group Securities Corporation and Michael Nixon are jointly and severally liable for, and shall pay to Claimant, Diana Pagel the sum of \$58,478.95 plus interest at the legal rate from April 1, 1992, until paid.
3. Claimant, Diana Pagel's requests for attorney's fees, and for punitive damages are hereby denied and dismissed.
4. Each party shall bear their own costs of this arbitration, except as set forth below.

#### OTHER COSTS

5. Forum fees shall be divided amongst the parties as set forth below.

#### FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

5 hearing sessions X \$750.00 = \$3,750.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional Forum Fees in the amount of \$1,000.00 are assessed against Respondent R. G. Dickenson & Co.

Additional Forum Fees in the amount of \$1,000.00 are assessed against Respondent Michael Nixon.

Additional Forum Fees in the amount of \$1,000.00 are assessed against Respondent Allied Group Securities Corporation.

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

#### CONCURRING ARBITRATORS

Dated:

May 20, 1992

/s/Samuel Van Pelt  
Samuel Van Pelt  
Presiding Chair  
Public Arbitrator

May 20, 1992

/s/Rosemary M. Skrupa  
Rosemary M. Skrupa  
Public Arbitrator

May 26, 1992

/s/Steven R. Christensen  
Steven R. Christensen  
Industry Arbitrator