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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Helen Wollen

No. 91-03756

Name of Respondents

R.G. Dickinson, Inc.  
Steve Biermann

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REPRESENTATION OF PARTIES

For Claimant: C.L. Robinson, Esq. of Fitzgerald, Schorr, Barmettler & Brennan, Omaha, Nebraska.

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

CASE INFORMATION

Statement of Claim filed: November 26, 1991.

Claimant's Submission Agreement signed on: November 19, 1991.

Joint Statement of Answer filed by Respondents on: February 10, 1992.

Respondents R.G. Dickinson & Co.'s and Steve Biermann's Submission Agreements signed on: February 7, 1992.

HEARING INFORMATION

Hearing Dates: July 22, 1992 for two (2) sessions.

Hearing Location: Omaha, Nebraska.

CASE SUMMARY

Claimant, Helen C. Wollen ("Wollen") alleged that Respondent R. G. Dickinson & Co. ("Dickinson") through its agent, Respondent Steve Biermann ("Biermann") engaged in unauthorized trading and churned Wollen's individual retirement account. Wollen further alleged that Dickinson and Biermann breached their fiduciary duties owed to Wollen, committed fraud, and were negligent.

Wollen specifically alleged that her initial investment was "churned" or "rolled" five times in two years to generate six commissions, including three "full load" commissions on mutual funds. Wollen alleged that Biermann purchased 300 units of the Preferred Income Fund II and signed a Subscription Agreement without her authorization. Wollen alleged that these investments were inappropriate because they were speculative, illiquid, and had no predictable income. Wollen also alleged that Biermann, by signing the Subscription Agreement, misrepresented to the Preferred Income Fund II and the Westin Financial Group that they had authority to make the investment, that they had consulted with Wollen about the investment and that the investment was suitable for Wollen. Wollen alleged that had the funds been left in the original investment, Delaware funds, they would have had a value of \$86,935 on September 30, 1991.

Respondents Dickinson and Biermann alleged that the investments were consistent with Wollen's investment objectives and that all investments were authorized by her. Dickinson and Biermann also denied Wollen's account was churned and that they breached any fiduciary duty owed to Wollen. Dickinson and Biermann asserted that Wollen's failure to claim that the trades were unauthorized for a year and a half after the transaction, ratified the trades and estopped her from claiming any damages.

RELIEF REQUESTED

Claimant requested an Award against the Respondents in the amount of \$49,120.00 in compensatory damages and \$491,200.00 in punitive damages, together with costs and expenses.

Respondents requested that the Claimant's Statement of Claim be dismissed.

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, Inc. and Steven Biermann shall be and hereby are jointly and severally liable for and shall pay to the Claimant Helen Wollen, actual damages in the amount of Twenty Four Thousand One Hundred Thirty Five Dollars and No Cents (\$24,135.00);
2. Claimant Helen Wollen shall assign to Respondents R.G. Dickinson, Inc. and Steve Bierman, all rights and interest she holds in the 300 units of the Westin Financial Group Preferred Income Fund II Limited Partnership, and shall tender these units to Respondents R. G. Dickinson, Inc. and Respondent Steve Biermann;
3. Claimant Helen Wollen's request for punitive damages is denied;
4. Claimant Helen Wollen's claims of churning, breach of fiduciary relationship, fraud and negligence are denied; and
5. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees, other than those specifically enumerated for herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedures, the following Forum Fees are assessed:

2 sessions X \$500 = \$1000 minus hearing session deposit of \$500 = \$500.

Forum Fees Assessed Against: Respondent R.G. Dickinson, Inc. and Steve Biermann jointly and severally, in the amount of \$500.00.

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

By The Arbitration Panel:

Dated:

/s/ Samuel Van Pelt, Chairperson  
Public Arbitrator

September 29, 1992

/s/ Stephen E. Gehring  
Public Arbitrator

September 18, 1992

/s/ Earl Madsen  
Industry Arbitrator

September 23, 1992

Date Award Served By The NASD: October 15, 1992