

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimants

Mae Kirk Coburn
John Kirk Coburn
Richard Kirk Coburn

No.s 92-00462
92-02237
Consolidated

Name of Respondents/Crossclaimants

R.G. Dickenson & Co.
Gerald Verr

Name of Respondent/Crossrespondent

Mark Verr

REPRESENTATION OF PARTIES

For Claimants: Michael Fitzsimmons, Esq. of Fitzsimmons, Roberts & Payne, Oakbrook, Illinois.

For Respondent Gerald Verr: Stephen Verr, Esq., Chicago, Illinois.

Respondent Mark Verr appeared pro se.

CASE INFORMATION

Statement of Claim for case no. 92-00462 filed: February 6, 1992.

Claimants' Submission Agreement signed: January 20 and 21, 1992.

Joint Statement of Answer and Crossclaim filed by Respondents R. G. Dickenson & Co. and Gerald Verr on: May 4, 1992.

Respondent R. G. Dickenson & Co.'s Submission Agreement signed on: April 2, 1992.

Statement of Claim for case no. 92-02237 filed: July 6, 1992.

Claimant's Submission Agreement signed: June 29, 1992.

Joint Statement of Answer and Crossclaim filed by Respondents R. G. Dickenson & Co. and Gerald Verr on:

Respondent R. G. Dickenson & Co.'s Submission Agreement signed: November 24, 1992.

The NASD does not have a record of Gerald Verr having filed a Submission Agreement.

Respondent Mark Verr has failed to Answer both claims, and has failed to file Submission Agreements for both cases.

Claimants' Dismissal of R.G. Dickenson & Co. from case no.s 92-00462 and 92-02237 filed: May 5, 1993.

HEARING INFORMATION

Hearing dates: May 5, 1993. Two (2) sessions.
May 6, 1993. Two (2) sessions.
May 7, 1993. Three (3) sessions.
June 3, 1993. One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants, Mae Kirk Coburn, John Kirk Coburn, and Richard Kirk Coburn, ("Claimants") alleged: breach of contract; breach of fiduciary duty; violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5; violation of Section 12 of the Illinois Securities Law of 1953 (Ill. Rev. Stat. Ch. 121-1/2 paragraphs 137.12 and 137.13A); violation of the Illinois Consumer Fraud and Deceptive Practices Act (Ill. Rev. Stat. Ch. 121-1/2, paragraphs 261 and 262); and violation of Section 20(A) of the 1934 Act by Respondents Mark Verr, and Gerald Verr. The allegations arose out of Mark Verr's alleged directions to employees of R. G. Dickenson & Co. to draw checks on Claimants' accounts, payable to himself, and then allegedly deposited those checks to hi personal bank account. Mark Verr allegedly had the checks drawn on accounts of customers of Gerald Verr.

In his Answer, Gerald Verr denied that he had any involvement, or knowledge of, the alleged conversion of the checks, and further denied all other allegations contained in the Statement of Claim. In addition, Gerald Verr set forth the following affirmative defenses:

1. The loss or damage sustained by the Claimants after the

first check alleged converted from their accounts had been occasioned as a direct and proximate result of their own acts or omissions, contributory or comparative negligence or wrongful acts or culpable conduct, in particular, their failure to report the non-receipt of checks shown disbursed to them on their monthly statements, and Gerald Verr should not be required to reimburse them for the avoidable loss.

2. The relief sought in the Statement of Claim should be reduced by virtue of the Claimants' failure to mitigate damages.

3. In failing to report missing checks in a timely fashion, Claimants have ratified the conduct or are estopped from seeking relief from Gerald Verr.

Gerald Verr also asserted a Crossclaim against Mark Verr for any liability assessed against himself for all damages resulting from Mark Verr's wrongful acts.

RELIEF REQUESTED

Claimants Mae Kirk and John Kirk Coburn requested an award against Gerald Verr and Mark Verr in the amount of \$59,731.55, plus interest, costs, and attorneys' fees.

Claimant Richard Kirk Coburn requested an award against Gerald Verr and Mark Verr in the amount of \$115,975.53, plus interest, costs, and attorneys' fees.

Respondent Gerald Verr requested that the Claims be dismissed. In addition, Gerald Verr asserted a Crossclaim against Mark Verr for any liability found against him, that he should recover over and against Mark Verr for all damages resulting from Mark Verr's wrongful acts.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Gerald Verr did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 8 of the Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing and therefore is bound by the determination of the panel on all issues submitted.

Respondent Mark Verr has failed to file both an Answer and a properly executed submission to arbitration, but is required to submit to arbitration pursuant to Section 8 of the Code, appeared and testified at the hearing, and therefore is bound by the determination of the panel on all issues submitted.

On April 22, 1993, Respondent Gerald Verr filed a Motion to Dismiss and Request for pre-hearing conference. Claimants' response was received by the NASD on May 3, 1993, and both documents were sent to the panel on May 3, 1993. After reviewing the documents, and deliberation, the panel denied the Motion and the Request.

At the start of the hearing on May 5, 1993, the undersigned arbitrators were informed that Claimants had reached a settlement agreement with Dickenson & Co., and that Claimants were dismissing their claims against Dickenson & Co. Respondent Gerald Verr made a Motion to have the settlement amount divulged in regards to a set-off of any award against him. After hearing argument from the parties, and deliberation, the panel took the Motion under advisement.

On May 5, 1993, Claimants next filed a Motion to Bar Respondent Mark Verr from testifying. After hearing argument from all parties, and deliberation, the panel denied the motion.

On May 5, 1993, Respondent Gerald Verr renewed his Motion to Dismiss. After hearing argument, and deliberation, the panel denied the motion.

On May 5, 1993, after the hearing had commenced, Counsel for Gerald Verr raised a peremptory challenge as to arbitrator Koschulek. The peremptory challenge was denied. Arbitrator Koschulek declined to recuse herself. Claimants did not join in Gerald Verr's request. Ms. Koschulek remained as an arbitrator in this matter.

On May 5, 1993, Respondent Mark Verr admitted, on the record, in his opening statement, that he was the sole reason why the hearing was being held. Mark Verr further admitted, amongst other things, that he had taken Claimants' money and did it without the knowledge of any party.

On May 5, 1993, Respondent Gerald Verr made a Motion to Exclude certain evidentiary documents that Claimant planned to use at the hearing, and allegedly were not disclosed to him under Section 32(c) of the Code. Gerald Verr's counsel agreed to stipulate to the admission of the documents turned over to both parties by R. G. Dickenson & Co. Claimants agreed, but reserved the right to object to any documents that they were "surprised" by. After hearing from the parties, the panel agreed to allow the stipulation but allowed both the Claimants and Gerald Verr the right to object to any individual document(s) the parties were "surprised" by.

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 originals 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. Claimants', Mae Kirk Coburn's, John Kirk Coburn's, and Richard Kirk Coburn's, claims against Respondents R. G. Dickenson & Co. and Gerald Verr, in case numbers 92-00462 and 92-02237, are hereby denied and dismissed with prejudice.

2. The undersigned panel finds that Respondent Mark Verr's actions constituted fraud, and therefore, Respondent Mark Verr is liable for, and shall pay to Claimants, Mae Kirk Coburn, John Kirk Coburn, and Richard Kirk Coburn the sum of \$35,000.00 as satisfaction for all claims made in arbitration numbers 92-00462 and 92-02237.

3. Respondent Mark Verr is liable for, and shall pay to Claimants, Mae Kirk Coburn, John Kirk Coburn, and Richard Kirk Coburn the sum of \$29,354.72 as an award of attorneys' fees. The authority for the award of attorneys' fees can be found in Ill. Rev. Stat. Ch. 121-1/2 Sections 262, and 270A(c).

4. Respondents R.G. Dickenson & Co.'s and Gerald Verr's Crossclaim against Mark Verr is hereby denied and dismissed with prejudice.

OTHER COSTS

Each party is liable for their own costs, expenses, and attorneys' fees associated with this arbitration, except as specifically provided by this award.

FORUM FEES

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

8 hearing sessions x \$750.00 = \$6,000.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$150.00, and shall retain the hearing session deposit in the amount of \$500.00 previously paid to the NASD by the Claimants Mae Kirk Coburn and John Kirk Coburn.

Pursuant to Section 43(c) of the Code, 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 Claimant Richard Kirk Coburn.

Pursuant to Sections 30(b) and 43(c) of the Code, the NASD shall retain the postponement fee in the amount of \$750.00 previously paid to the NASD by R.G. Dickenson & Co.

Additional forum fees in the amount of \$2,750.00 are assessed against the Claimants.

Additional forum fees in the amount of \$2,000.00 are assessed jointly and severally against Mark Verr and Gerald Verr.

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

CONCURRING ARBITRATORS

Dated:

Name:

June 29, 1993

/s/Jacques F. Heilingoetter
Jacques F. Heilingoetter
Presiding Chair
Public Arbitrator

June 18, 1993

/s/Mary Anne Kosciulek
Mary Anne Kosciulek
Public Arbitrator

June 30, 1993

/s/Ralph Pierce
Ralph Pierce
Industry Arbitrator

Date of Service by the NASD: _____