

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

J. Edmund & Co.

and

93-00015 ✓
(Consolidated with 93-00105)

Name of Respondents

VTR Capital, Inc.
Regis D. Dahl

Name of Claimants

VTR Capital, Inc.
Regis D. Dahl

and

93-00105

Name of Respondents

J. Edmund & Co.
Jelco, Inc. and John E. Ligums

REPRESENTATION OF PARTIES

J. Edmund & Co., Jelco, Inc., and John E. Ligums (collectively as "Claimants") were represented by James C. Heigham, Esq. of Choate, Hall & Stewart, Boston, Massachusetts.

VTR Capital, Inc. ("VTR") and Regis D. Dahl ("Dahl") (collectively as "Respondents") were represented by D. Elizabeth Wills, Esq. and A. Thomas Tenenbaum, Esq. of A. Thomas Tenenbaum, P.C., Denver, Colorado.

CASE INFORMATION

93-00015

The Statement of Claim was filed on or about January 5, 1993. Submission Agreement of Claimant J. Edmund & Co. was signed on December 30, 1992 by John Ligums. Motion to Amend Claim with Amended Count VII was filed on or about April 5, 1993.

Statement of Answer and Motion to Dismiss Claimant's RICO Claim were filed by Respondent on or about March 1, 1993. Submission Agreement of Respondent VTR Capital, Inc. was signed on February 12, 1993 by Harold W. Gordon. Submission Agreement of Respondent Regis D. Dahl was signed on February 12, 1993. Motion to Deny Motion to Amend and Renewed Motion to Dismiss Claimant's RICO Claim was filed on or about April 12, 1993. Response to Count VII of the Amended Statement of Claim of Claimant J. Edmund & Co., Inc. was filed on or about July 19, 1993.

93-00105

The Statement of Claim was filed on or about January 8, 1993. Submission Agreement of VTR Capital, Inc. was signed on January 7, 1993 by Harold W. Gordon. Submission Agreement of Regis D. Dahl was signed on January 7, 1993. Response of Regis D. Dahl to Counterclaim is dated March 5, 1993. Response to Motion to Dismiss was filed on or about February 26, 1993.

Respondent's Answer and Counterclaim was filed on or about February 17, 1993. Submission Agreement of J. Edmund & Co. was signed on February 4, 1993 by John E. Ligums. Submission Agreement of Jelco, Inc. was signed on February 4, 1993 by John E. Ligums. Submission Agreement of John E. Ligums was signed on February 4, 1993. Motion to Dismiss All Claims by VTR Capital, Inc. was filed February 5, 1993. Reply to VTR's Response to J. Edmund's Motion to Dismiss was filed on or about March 4, 1993.

HEARING INFORMATION

A telephonic pre-hearing conference was held on Thursday, October 14, 1993 for one (1) session with William D. Nelson, Esq. presiding.

The hearing was held on Monday, October 25, 1993 for two (2) sessions, Tuesday, October 26, 1993 for two (2) sessions, Wednesday, October 27, 1993 for two (2) sessions, Thursday, October 28, 1993 for three (3) sessions and Friday, October 29, 1993 for one (1) session in Denver, Colorado for a total of ten (10) hearing and one (1) pre-hearing sessions.

CASE SUMMARY

Claimants alleged that Regis D. Dahl violated his fiduciary duty to J. Edmund & Co.; that Dahl and VTR violated N.A.S.D. Rules of Fair Practice; that Dahl and VTR interfered with advantageous business relationship; that Dahl and VTR defamed J. Edmund & Co.; and engaged in conduct with violated RICO. Specifically, Claimants alleged that while still associated with J. Edmund & Co., Dahl and VTR conspired to induce ProConnexions to replace J. Edmund & Co. with VTR as the underwriter of its public offering. Claimants further alleged that Dahl and VTR advised ProConnexions and others that J. Edmund & Co. did not have sufficient net capital to complete the ProConnexions offering.

Respondents denied the allegations set forth in the Statement of Claim filed in matter 93-00015. In the Claim filed in matter 93-00105, Respondents alleged that J. Edmund breached its contract with Dahl; violated its contract with VTR to participate in the Unique Mobility offering; and failed to pay Dahl for investment banking and syndicate services which it benefitted from. Specifically, Respondents alleged that Dahl was to receive \$50,000.00 for each public offering undertaken or engaged in as managing underwriter by J. Edmund in addition to 50% of all warrants earned by J. Edmund from the successful completion of all public offerings by J. Edmund.

In their Answer and Counterclaim filed in matter 93-00105, Claimants denied the allegations and stated that no money was due Dahl or VTR, that in fact Dahl owes them approximately \$175,000.00; denied that Dahl was entitled to any warrants; and stated that VTR's claim for warrants had been released when VTR gave J. Edmund a general release in December 1991.

RELIEF REQUESTED

In the Statement of Claim filed in matter 93-00015, Claimant J. Edmund & Co. requested that all profit, benefits and other consideration including but not limited to underwriter's discount, non-accountable expense allowance, consulting fee, underwriter's warrants and other direct or indirect compensation accruing to VTR Capital, Inc. and Regis D. Dahl as a result of the ProConnexions underwriting be accounted for and paid to J. Edmund & Co.; that J. Edmund & Co. be fully compensated for all its expenses, including but not limited to legal fees and disbursements, incurred by it in connection with the proposed initial public offering for ProConnexions; treble damages under RICO; and punitive damages.

In their Answer and Counterclaim filed in matter 93-00105, J. Edmund & Co. and John E. Ligums requested that the claims asserted against them be denied and requested an award of a total amount of \$167,023.00; the return of all files of the former J. Edmund Colorado branch office, including, without limitation, account records, correspondence, due diligence files, and other documents issued or received in connection with public offerings or proposed public offerings.

In the Answer filed in matter 93-00015, VTR Capital, Inc. and Regis D. Dahl requested that the claims and averments of damages be dismissed and that they be awarded their attorney's fees and all costs and expenses of defending and appearing in this matter.

In the Claim filed in matter 93-00105, VTR Capital, Inc. and Regis D. Dahl requested an award of \$379,146.49, plus interest at the rate of 10% from March 1, 1992 until payment is made, and to transfer to Regis D. Dahl the following underwriter's warrants: 20,000 warrants of Cine-Source, 62,500 warrants of Unique Mobility, 33,500 warrants of Standish Care; the transfer of 15,000 Underwriter's warrants to purchase common stock of Unique Mobility to VTR Capital, Inc.; reasonable attorney's fees; and punitive damages.

In his Answer to the Counterclaim Regis D. Dahl requested that all claims asserted against him be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

At the commencement of the hearing of this matter, J. Edmund & Co. and John E. Ligums reasserted their Motion to Dismiss the claims asserted against them by VTR Capital, Inc. and Regis D. Dahl. After hearing argument of counsel on behalf of the parties and reviewing certain documentary evidence, the undersigned arbitrators denied the motion.

During the course of the hearing and during the presentation of its case in chief, J. Edmund & Co. voluntarily dismissed Count IV of the Counterclaim filed in matter 93-00105 which sought damages attributable to the J. Edmund & Co. branch operated by Dahl and Hensley.

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 N.A.S.D.

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. The claims asserted in matter 93-00015 and the Counterclaim asserted in matter 93-00105 by J. Edmund & Co. shall be and hereby are denied and dismissed in their entirety.
2. The claims asserted by VTR Capital, Inc. in matter 93-00105 shall be and hereby are denied in their entirety.
3. J. Edmund & Co. shall pay to Regis D. Dahl the sum of *seventy eight thousand six hundred thirteen dollars* (\$78,613.00).
4. Interest at the rate of 8% per annum is awarded on the above stated sum from and inclusive of May 4, 1993 to and inclusive of the date this award is paid in full.
5. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to §44(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the nonrefundable filing fee in the amount of

\$500.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the N.A.S.D. by the Claimants. The N.A.S.D. shall retain the nonrefundable filing fee in the amount of \$500.00 and the hearing session deposit in the amount of \$750.00 previously deposited with the N.A.S.D. by Respondents. The N.A.S.D. shall retain the nonrefundable filing fee in the amount of \$500.00 and the hearing session deposit in the amount of \$750.00 previously deposited with the N.A.S.D. by Claimants for the Counterclaim filed in matter 93-00105. J. Edmund & Co., Jelco, Inc., and John E. Ligums shall be and hereby are jointly and severally liable for and shall pay to the N.A.S.D. the sum of \$2,250.00 and VTR Capital, Inc. and Regis D. Dahl shall be and hereby are jointly and severally liable for and shall pay to the N.A.S.D. the sum of \$3,000.00 as additional forum fees.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ William D. Nelson, Esq.

November 9, 1993

William D. Nelson, Esq.

Industry Arbitrator, Presiding Chair

s/ Devra Perch

November 15, 1993

Devra Perch

Industry Arbitrator

s/ Robert S. Paauw

November 9, 1993

Robert S. Paauw

Industry Arbitrator