

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

---

In the Matter of the Arbitration Between

**Name of Claimants**

Florindo Mariani and Patricia Mariani, Joint Tenants  
with rights of survivorship; Diana Mariani, Attorney in Fact for  
Florindo Mariani and Patricia Mariani

and

93-02939

**Name of Respondents**

Dickinson & Co.  
Bryant Robertson and  
Mark Van Deusen

---

**REPRESENTATION OF PARTIES**

Florindo Mariani and Patricia Mariani, Joint Tenants with rights of survivorship; Diana Mariani, Attorney in Fact for Florindo Mariani and Patricia Mariani ("Claimant") was represented by William D. Nelson, Esq. of Robinson Waters O'Dorisio & Rapson, P.C., Denver, Colorado.

Dickinson & Co. ("Respondent") was represented by Cathryn B. Mayers, Esq. of Brega & Winters, P.C., Denver, Colorado.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 27, 1993. Submission Agreement of Claimant Diana Mariani, individually and as attorney in fact for Florindo Mariani and Patricia Ann Mariani was signed on July 26, 1993.

Statement of Answer was filed by Respondent Dickinson & Co. on or about September 22, 1993. Submission Agreement of Respondent Dickinson & Co. was signed on September 16, 1993 by Thomas M. Swartwood.

Statement of Answer was filed by Respondent Mark Van Deusen on or about September 16, 1993. Submission Agreement of Respondent Mark Van Deusen was signed on September 13, 1993.

Statement of Answer was filed by Respondent Bryant Robertson on or about September 24, 1993.

### **HEARING INFORMATION**

The hearing was held on Wednesday, May 18, 1994 for two (2) sessions and Thursday, May 19, 1994 for one (1) session in Denver, Colorado for a total of three (3) sessions.

### **CASE SUMMARY**

Claimant alleged that Bryant Robertson while employed as broker at Dickinson & Co. made an unauthorized transaction in the account of Florindo Mariani and Patricia Ann Mariani. Specifically, Claimant alleged that Mr. Robertson purchased 3,000 shares of California Micro Devices without her authorization. Ms. Mariani further alleged that upon receipt of the confirmation for the purchase of the 3,000 shares of California Micro Devices she wrote a letter to the firm and broker in accordance with the instructions on the confirmation.

Respondent Dickinson & Co. denied having received the letters which Claimant states were sent to it. Respondent also stated that after a conversation between Claimant and Mark Van Deusen in which Claimant stated that he purchase in question was unauthorized, Mr. Van Deusen sold out the stock. Respondent stated that in selling out the position it and its employee Van Deusen acted properly.

### **RELIEF REQUESTED**

Claimant requested an award of:

actual damages in the amount of	\$12,295
actual interest charged to the account as a result of the transaction	1,415
lost investment opportunity	5,000
punitive damages for Florindo Mariani	25,000
punitive damages for Patricia Ann Mariani	25,000
punitive damages for Diana Mariani	25,000
and treble damages as allowed by law.	

In addition, Claimant requested such further relief as deemed appropriate by law, that Respondents pay all costs, interest, tax planning services, services rendered by Diana Mariani in an attempt to resolve this matter. Claimants also requested that the 1099 form for the year 1992 be corrected to delete any and all activity related to California Micro Devices Corporation.

Respondent Dickinson & Co. requested that the Statement of Claim be dismissed and that she be awarded no damages by virtue of her Statement of Claim.

**OTHER ISSUES CONSIDERED & DECIDED**

Claimant filed a Motion to Amend the Statement of Claim on or about April 29, 1994. After reviewing the motion and the response filed on behalf of Dickinson & Co., the undersigned arbitrators **denied** the motion. In denying the motion, the arbitrators advised Claimant's counsel that Claimant would be allowed to argue the law to conform to the evidence presented in closing argument.

Respondent Bryant Robertson asserted a Motion to Dismiss at the commencement of the hearing. This motion was based upon the fact that he had filed for bankruptcy on or about January 10, 1994 and that an automatic stay was in effect as against him. Mr. Robertson also asserted a Motion to Quash the subpoena to testify which was served upon him for the same reason. The panel after hearing the positions of the other parties, **granted** the Motion to Dismiss and **denied** the Motion to Quash.

Respondent Mark Van Deusen was dismissed as a Respondent in this matter by Claimant.

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:

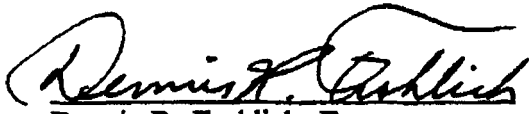
1. Respondent Dickinson & Co. shall be and hereby is liable for and shall pay to the Claimant Diana Mariani the sum of **Thirty two thousand three hundred ninety nine dollars (\$32,399)**. This sum includes an award of attorney's fees. In making this award of attorney's fees, the undersigned arbitrators have determined that they have authority to so award attorney's fees under Colorado statute.
2. Interest at the rate 8% per annum is awarded on the above stated sum from and inclusive of the date of this award to and inclusive of the date this award is paid in full.
3. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.
4. The request for punitive damages is specifically denied.

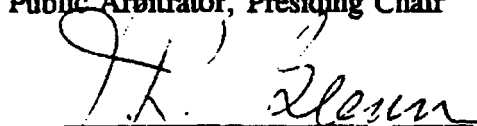
**FORUM FEES**

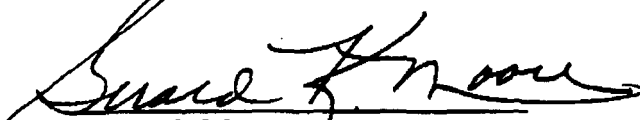
Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were 3 sessions x \$750 = \$2,250 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(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 non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the N.A.S.D. by the Claimant. Respondent Dickinson & Co. shall be and hereby is liable for and shall pay to the NASD the sum of \$1,500 as the balance due for forum fees.

The N.A.S.D. shall retain any postponement fees previously deposited with the N.A.S.D. by the parties, if any. Fees are payable to the National Association of Securities Dealers, Inc.

  
Dennis R. Frohlich, Esq.  
Public Arbitrator, Presiding Chair

  
J. K. Glenn, Esq.  
Public Arbitrator

  
Gerald K. Moore  
Industry Arbitrator

Dated:

May 19, 1994

May 19, 1994

May 19, 1994

Dated: 5/26/94