

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Lionel A. Dorsay,
Claimant,

v.

No. 93-03349

William Hecht,
Kent Casey, and
R.G. Dickenson & Co., n/k/a
Dickenson & Co.
Respondent

REPRESENTATION OF PARTIES

L. Eric Dowell, Esq., of Burns, Shields & Partners, P.C., Phoenix, Arizona, represented Lionel A. Dorsay ("Claimant").

Sid Spaeth, Esq, of Faegre & Benson, Minneapolis, Minnesota represented William Hecht, Kent Casey, and Dickenson & Co. ("Respondents").

CASE INFORMATION

Claimant's Statement of Claim was filed on or about August 25, 1993. Claimant's Submission Agreement was signed on August 20, 1994.

Respondents' joint Answer to the Statement of Claim was filed on or about November 15, 1993. Respondent Dickenson & Co.'s Submission Agreement was signed on November 12, 1993. The NASD does not have a record of Respondents Kent Casey and William Hecht having filed Submission Agreements.

HEARING INFORMATION

Hearing date: June 15, 1994. Three (3) sessions.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimant alleged that Respondents: Violated A.R.S. Section 44-1991, for the misrepresentation and omission of material facts in connection with the purchase of securities; negligently misrepresented information to the Claimant concerning the purchase of Interactive Media Technologies, Inc.'s ("Interactive") units purchased by the Claimant; and breached their fiduciary duty, in that they failed to provide the requisite degree of care and due diligence in Claimant's purchase of Interactive's units.

In their joint Answer, unless otherwise admitted therein, Respondents denied each and every allegation in the Statement of Claim. In addition, Respondents asserted the following affirmative defenses:

1. Claimant may not recover under the Statement of Claim because the Statement of Claim fails to State a claim upon which relief may be granted.
2. Claimant's action or inaction bars him from recovery under the Statement of Claim by reason of waiver.
3. Claimant's action or inaction bars him from recovery under the Statement of Claim by reason of the doctrine of estoppel.
4. Claimant has suffered no damages as a result of any alleged wrongful action or in on the part of any of the Respondents.
5. Claimant's claims are barred or reduced by reason of his own negligence and failure to exercise such diligence with respect to his investments as would be expected of a reasonable person under the same circumstances.
6. Claimant's losses, if any, were caused or contributed to by the acts of parties over whom Respondents did not have control and for whom Respondents are not responsible.

RELIEF REQUESTED

Claimant requested that the arbitrators enter an award in his favor upon the following: For Claimant's consequential damages in the amount to be provided at arbitration but in no event less than \$40,000.00; for attorneys' fees and costs incurred by Claimant in prosecuting this action; for interest on Claimant's consequential damages to be proved at arbitration, his reasonable attorneys' fees and costs incurred from the date of entry of the award until paid in full; and for such other and further relief as the arbitrators deem appropriate under the circumstances.

Respondent requested that all claims asserted in the Statement of Claim be dismissed in their entirety and that Claimant be ordered

to reimburse Respondents Casey and Hecht for reasonable fees and expenses and to compensate them for damage to their respective good names and businesses.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Casey and Hecht did not file with the NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing, and are therefore bound by the determination of the panel on all issues submitted.

An oral Motion to Dismiss Respondent Casey was made prior to opening statements being made. After hearing argument from counsel, and deliberation, the arbitrators denied the motion.

At the close of Claimant's case, Respondents made an oral Motion for a Directed Verdict. After hearing argument from counsel, and deliberation, the panel took the motion under advisement to be ruled on in their award.

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, Lionel A. Dorsay's claims are hereby, and each of them, denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth more fully below.

FORUM FEES

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

3 hearing sessions x \$400.00 = \$1,200.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$120.00, and shall RETAIN the hearing session deposit in the amount of \$530.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$670.00 are assessed against the Claimant.

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

CONCURRING ARBITRATORS

Dated:

Name:

June 16, 1994

Charles A. Finch/s/
Charles A. Finch
Presiding Chair
Public Arbitrator

June 16, 1994

Ted R. Pickett/s/
Ted R. Pickett
Public Arbitrator

June 16, 1994

James Sullivan/s/
James Sullivan
Industry Arbitrator

Date of Service by the NASD: 6-21-94