

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Werner Heilingner,
Claimant, .

v.

No. 93-05000

William Hecht, and
R. G. Dickenson & Co., n/k/a
Dickenson & Co.
Respondents

REPRESENTATION OF PARTIES

Claimant Werner Heilingner ("Claimant") was represented by David Liebrader, Esq., of Investors Arbitration Services, Inc., , California.

Respondents William Hecht and Dickenson & Co. ("Respondents") were represented by David Jordan, Esq., of Titus, Bruchner & Berry, Phoenix, Arizona.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about December 2, 1993. Claimant's Submission Agreement was signed on November 23, 1993.

Respondents' joint Answer was filed on or about March 1, 1994. Respondents' Submission Agreements were signed on February 25, 1994, and March 14, 1994, respectively.

HEARING INFORMATION

Hearing dates: November 2, 1994. Two (2) sessions.
November 3, 1994. Two (2) sessions.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimant alleged that Respondents: Made/recommended unsuitable investments for his account; breached their fiduciary duty to the Claimant; knowingly and recklessly made representations and recommendations which acted as a fraud upon Claimant and induced Claimant into entering into inappropriate and speculative investments; made material misrepresentations and omissions to the Claimant; failed to act with reasonable care in the handling of Claimants accounts; and churned Claimant's account while exercising

de facto discretion and authority over Claimant's account. Claimant further alleged that Dickenson and Biltmore failed to supervise Respondent Hecht's activities. The allegations arose out of transactions in Go Video stock, and other stocks and options more fully discussed at the hearing in this matter.

In their Answer, Respondents, unless specifically admitted in the Answer, denied the allegations contained 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 the doctrine 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 inaction on the part of the Respondents.
5. Claimant's claims are barred or reduced by reason or 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 a joint and several award against the Respondents as follows: Compensatory damages in the amount of not less than \$60,000.00; punitive damages in an amount to be determined by the arbitrators; pre-award and post-award interest at the maximum rate allowed by law from the date of the original investment; and for cost of arbitration and expenses including reasonable consulting fees, expert witness fees and any other costs deemed reasonable.

Respondents requested Claimant's claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the panel has determined that Respondent has been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent had received due notice of the hearing as required under Section 26 of the Code, and that the arbitration of the matter would proceed pursuant to Section 29 of the Code.

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. Respondents Dickenson & Co. and William Hecht are jointly and severally liable for, and shall pay to the Claimant, Werner Heilinger, the sum of \$30,181.45 as satisfaction for all of his claim for compensatory damages.
2. All other claims not specifically covered are, 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 and consulting fees, except as set forth more fully below.

FORUM FEES

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

$$4 \text{ hearing sessions} \times \$500.00 = \$2,000.00$$

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 Claimant. In addition, Claimant shall remit an additional forum fee of \$500.00.

Additional forum fees in the amount of \$1,000.00 are assessed jointly and severally against the Respondents.

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

CONCURRING ARBITRATORS

Dated:

Name:

November 7, 1994

David B. Zlotnick/s/
David B. Zlotnick
Presiding Chair
Public Arbitrator

November 17, 1994

Daniel J. Danvir/s/
Daniel J. Danvir
Public Arbitrator

November 11, 1994

Stephen T. Yeargen/s/
Stephen T. Yeargen
Industry Arbitrator

Date of Service by the NASD: _____