

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

Willis L. Winstrom,  
Claimant,

v.

No. 93-05325

R.G. Dickenson & Co. n/k/a  
Dickenson & Co.,  
Respondent.

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**REPRESENTATION OF PARTIES**

Willis L. Winstrom ("Claimant") was represented by Bruce Pearson from Fargo, North Dakota. On or about April 10, 1995, Claimant changed his representation to Tyler B. Gaines, Esq., of Gaines, Mullen, Pansing & Hogan, Omaha, Nebraska.

Respondent Dickenson & Co. ("Respondent") was represented by Catherine Gnatek, Esq. of Dorsey & Whitney, Minneapolis, Minnesota.

**CASE INFORMATION**

Claimants' Statement of Claim was filed on or about November 9, 1993. Claimants' Submission Agreement was signed on November 9, 1993.

Respondent's Statement of Answer was filed on or about February 22, 1993. Respondent's Submission Agreement was signed on February 25, 1994.

**HEARING INFORMATION**

The hearing was held on April 7, 1995 for one (1) session, and December 19, 1995 for two (2) sessions in Omaha, Nebraska for a total of three (3) sessions.

**CASE SUMMARY**

Claimants alleged that under Rule 10b5 of the Securities Act that Respondent failed to perform adequate due diligence, made misleading statements, omitted material facts, and breached their fiduciary responsibility. The allegations arose out of a purchase of a partnership interest in Signal Natural Gas Partners ("SNGP") in the fall of 1990.

In its Answer, unless otherwise set forth therein, Respondent denied each and every allegation of wrongdoing contained in the Statement of Claim and further denied liability of any kind to Claimants. Respondent specifically asserted that: Claimant was a knowledgeable investor; it

informed Claimant of all information relevant to his investment and provided Claimant with an offering circular; it acted according to law and industry rules and regulations as its actions related to SNGP and bringing an investment opportunity in SNGP to the attention of Claimant. In addition, Respondent asserted the following defenses: The Statement of Claim failed to state a claim upon which relief may be granted; any loss that Claimant suffered as a result of his investment in SNGP was caused by market factors beyond Respondent's control and Claimant's own voluntary investment decision; Claimant's claim is barred, in whole or in part, by the applicable statute of limitations; and Claimant assumed the risk associated with the investment decision he made.

### **RELIEF REQUESTED**

Claimant requested a return of principal in the amount of \$50,000, interest at the rate of seven (7%) percent, filing fees in the amount of \$650.00, and representative costs in the amount of \$5,000.00.

Respondent requested that the arbitrators deny the Statement of Claim in its entirety and award Respondent its costs and attorneys' fees incurred in responding to it.

### **OTHER ISSUES CONSIDERED & DECIDED**

On or about September 8, 1994, Respondent filed a Motion to Dismiss the Statement of claim as Time-Barred. On or about September 20, 1994, Claimant filed a Responses to the motion. After review of the motion, the response, the pleadings, and deliberation, the arbitrators denied the motion.

On or about March 29, 1995, Respondent filed a Motion to Dismiss the Statement of Claim for Claimant's failure to obey the panel's October 21, 1994 discovery Order. On April 7, 1995, a telephonic hearing was held on Respondent's. After review of the relevant documents, consideration of the parties' arguments, and deliberation, the panel granted the motion. On or about April 10, 1995, Claimant's attorney, Tyler B. Gaines, Esq., filed with the NASD, prior to a final decision by the panel, a request that the arbitrators reopen the hearing in this matter. On or about April 26, 1995, after consideration of the request and responses, the arbitrators granted the motion. However, Claimant was assessed \$1,000.00 to be paid as an attorney's fee for Respondent's attorneys. This arbitration was eventually reset for hearing on December 19, 1995.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony, the evidence presented at the hearing and post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant failed to meet his burden of proving the allegations in his Statement of Claim by a preponderance of the evidence, and Claimant's claim against Respondent is dismissed with prejudice.
2. The panel makes no award of attorneys' fees or costs against either party with the exception of the panel's previous award of attorneys' fees to Respondent. The session fees are to be divided equally between the Claimant and the Respondent.

### **FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were three (3) sessions x \$400 = \$1,200 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), 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 Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$120 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimant. The NASD shall **retain** the excess fees in the amount of \$130, as forum fees, initially deposited by the Claimant.

Additional forum fees in the amount of \$70 are assessed against Claimant.

Additional forum fees in the amount of \$600 are assessed against Respondent.

The NASD shall retain postponement fees in the amount of \$400 previously deposited with the NASD by the Respondent. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

W. Russell Bowie  
W. Russell Bowie  
Public Arbitrator, Presiding Chair

s/s

January 31, 1996

John C. Burke  
John C. Burke  
Public Arbitrator

s/s

January 31, 1996

Joseph Soshnik  
Joseph Soshnik  
Industry Arbitrator

s/s

January 31, 1996