

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Elsa Torres Gonzales

93-05352

**Names of Respondents**

R.G. Dickinson & Co.,  
Richard Andrew Russell, and  
James Michael Davis

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**REPRESENTATION**

Claimant, Elsa Torres Gonzales was represented by Russell L. Forkey, Esq. of Deerfield Beach, Florida.

Respondents, R.G. Dickinson & Co. and James Michael Davis were represented by Barbara Bennett, Esq. of Dickinson & Co., Des Moines, Iowa.

Respondent, Richard Andrew Russell was represented by Donald J. O'Bell, Esq. of Austin, Texas.

**CASE INFORMATION**

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on December 27, 1993.

Claimant, Elsa Torres Gonzales' Submission Agreement was signed on December 20, 1993.

A Statement of Answer was filed with the NASD by Respondents, R.G. Dickinson & Co. and Michael James Davis on March 16, 1994.

Respondent, R.G. Dickinson's Submission Agreement was signed on March 14, 1994 by Thomas M. Swartwood, Executive Vice President and General Counsel and Respondent, James Michael Davis' Submission Agreement was signed on March 31, 1994.

A Statement of Answer was filed with the NASD by Respondent, Richard Andrew Russell on March 17, 1994.

Respondent, Richard Andrew Russell's Submission Agreement was signed on February 18, 1994.

### **HEARING INFORMATION**

A pre-hearing conference which lasted one (1) hearing session was held on January 25, 1995 and a pre-hearing conference which lasted one (1) hearing session was held on May 24, 1995.

The hearing took place on June 19, 1995 for two hearing sessions and June 20, 1995 for two hearing sessions.

The hearing location was Dallas, Texas.

### **CASE SUMMARY**

Claimant, Elsa Torres Gonzales ("Gonzales") alleged causes of action for fraud, deceit, negligence, breach of fiduciary duty, breach of contract and as it related to Respondent, R.G. Dickinson & Co. ("Dickinson"), negligent supervision. Gonzales alleged that Respondents, Richard Andrew Russell ("Russell") and James Michael Davis ("Davis") improperly placed her in securities which were unsuitable to meet her investment objectives in both quality and quantity. Gonzales alleged that first Russell and then Davis represented that they would only recommend suitable investments for her and they also improperly and without her consent placed her in a margin account. Since Gonzales received margin calls, she alleged that some of her suitable investments were liquidated to meet the margin calls and to purchase some of the unsuitable securities which were placed in her account. Gonzales alleged that Dickinson failed to properly supervise Russell and Davis to insure that only suitable investments were purchased for her account.

Respondents, Dickinson and Davis denied the allegations of the claim and alleged that the investments made for her were suitable. In addition, they denied that Gonzales was placed in a margin account without her consent and Dickinson alleged that it had met all its responsibilities as to supervision of Davis and Russell as required by law. Dickinson and Davis asserted affirmative defenses including, but not limited to, waiver, estoppel, contributory negligence and failure to state a claim for relief.

Respondent, Russell denied the allegations of the claim and asserted the affirmative

defenses including, but not limited to, ratification, contributory negligence, laches, estoppel, failure to state a claim for relief and the claims were barred by the applicable statutes of limitation.

#### **RELIEF REQUESTED**

Gonzales requested damages and or rescission in the amount of approximately \$55,000.00, interest, costs, punitive damages of \$25,000.00 and such other relief as the panel deemed just.

Dickinson and Davis requested dismissal of the claim.

Russell requested dismissal of the claim and an award of costs and expenses including reasonable attorneys fees incurred by him.

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

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 originals 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. The claim asserted by Elisa Torres Gonzales against all respondents is denied and dismissed in its entirety; and,
2. The parties shall each bear their respective costs and attorney's fees incurred in this matter.

#### **FORUM FEES**

Pursuant to Section 43c of the NASD Code of Arbitration Procedure, the following Forum Fees are assessed. Forum Fees were calculated at the rate of \$500.00 per hearing session for four (4) hearing sessions and \$300.00 per hearing session for two (2) pre-hearing conferences. The total Forum Fees chargeable to the parties are \$2600.00.

**N.A.S.D. ARBITRATION NO. 93-05352**  
**AWARD PAGE 4 OF 4**

The NASD shall retain the \$150.00 non-refundable claim filing fee and the \$500.00 hearing session deposit previously deposited with the NASD by Gonzales. Additional Forum Fees in the amount of \$800.00 are assessed to Gonzales and additional Forum Fees in the amount of \$1300.00 are assessed to Dickinson.

Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

**Concurring Arbitrators' Signatures**

/s/ Charles P. Aberg  
Charles P. Aberg, Esq.  
Presiding Chairperson/Public Arbitrator

July 14, 1995  
Dated

/s/ Adrian Alter  
Adrian Alter  
Panelist/Public Arbitrator

July 18, 1995  
Dated

/s/ Lyn Lane  
Lyn Lane  
Panelist/Industry Arbitrator

July 17, 1995  
Dated

Date Award Served on the Parties by the NASD: July 27, 1995