

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Marie J. Simpson

95-01110

Names of Respondents

R.G. Dickinson & Co.
Kemper Securities, Inc.
Michael A. Wynn
Schneider Securities Inc.

REPRESENTATION

Marie J. Simpson ("Claimant") was represented by Eugene P. Welch, Esq. and John Svoboda, Esq. from Gross & Welch law firm located in Omaha, NE.

R.G. Dickinson & Co. ("Respondent") was represented by Barbara Bennett, Esq. of Dickinson & Co. located in Des Moines, IA.

Michael A. Wynn ("Respondent") appeared pro se.

Schneider Securities, Inc. ("Respondent") was represented by Margaret Ed. Peper, Esq. from Davis & Ceriani, P.C. located in Denver, CO.

CASE INFORMATION

The Statement of Claim was filed on or about March 3, 1995.

The Amended Statement of Claim was filed on or about May 15, 1995.

Claimant's Submission Agreement was signed on February 28, 1995.

The Statement of Answer of Respondent, R. G. Dickinson & Co. was filed on or about May 5, 1995.

Respondent, R.G. Dickinson & Co.'s Submission Agreement was signed on May 5, 1995 by Barbara Bennett, Esq., Vice President.

The Statement of Answer of Respondent, Schneider Securities, Inc. was filed on or about April 21,

1995.

The Amended Statement of Answer of Respondent, Schneider Securities, Inc. was filed on or about May 31, 1995.

The Submission Agreement of Respondent, Schneider Securities, Inc. was signed on April 21, 1995 by Rick J. Rouse, Compliance Officer.

HEARING INFORMATION

The hearing was held in Omaha, NE on the following dates:

- February 27, 1996 for two (2) sessions
- February 28, 1996 for two (2) sessions
- February 29, 1996 for three (3) sessions

CASE SUMMARY

In the Amended Claim, Marie J. Simpson ("Simpson") alleged that she informed Michael A. Wynn ("Wynn") from Kemper Securities, Inc. ("Kemper") of her desire to pursue conservative investments providing monthly income during their initial consultation in 1984. According to the Claimant, Wynn agreed to invest her funds in income producing investments. After leaving the employ of Kemper in April, 1989, Wynn worked for Boettcher & Company until about March, 1991 then for R.G. Dickinson ("Dickinson") until June 1991. As alleged, following the commencement of his employment with Schneider Securities, Inc. ("Schneider") in May, 1993, Wynn established a margin account for Claimant although the Claimant's wish was to not maintain a margin account. Simpson claimed that she was an unsophisticated investor who relied on the Respondents' recommendations while she was unable to understand the recommendations. Between May, 1989 and April, 1994, the Respondents allegedly induced activity in the account which was excessive since they generated over \$26,000.00 in commissions on 169 trades, the transactions were not consistent with Claimant's directions and the account was turned over approximately 44 times. The Claimant made several allegations against the Respondents including, but not limited to, breach of fiduciary duty, churning, common law fraud, violations of Section 10(b) of the Securities Exchange Act of 1934 and violation of Securities and Exchange commission Rule 10b-5.

Respondent, R.G. Dickinson & Co. denied every allegation of wrongdoing contained in the claim. Dickinson asserted several affirmative defenses including (1) Claimant may not recover because the Statement of Claim failed to state a claim upon which relief may be granted; (2) Claimant's action or inaction bars her from recovery under the Statement of Claim by reason of the doctrine of waiver and estoppel; (3) Claimant's has suffered no damages as a result of any alleged wrongful action or inaction on the part of Respondent; (4) Claimant's claims are barred or reduced by her own negligence and failure to exercise such diligence with respect to her investments as would be expected of a reasonable person under the same circumstances; (5) Claimant's losses were caused or contributed to by the acts of parties over whom Respondent did not have control and for whom

Respondent is not responsible; and (6) Claimant's claim was barred in whole or in part by the applicable statute of limitations.

In its Statement of Answer, Schneider Securities, Inc. denied each and every allegation of wrongdoing in the claim and alleged that Simpson was an experienced investor who transferred her margin account to Schneider with a margin debt of \$80,000.00. Schneider contended that Simpson's investment objectives listed on the new account form were growth, speculation, incline and investment grade. Schneider asserted several affirmative defenses including ratification, estoppel, contributory negligence, assumption of risk, failure to mitigate damages, lack of reliance upon any action or inaction at Schneider and good faith under 15 U.S.C.S. 78(f).

RELIEF REQUESTED

Claimant requested an award in the award of \$95,000.00 in compensatory plus attorneys' fees, costs and punitive damages.

Respondent, Dickinson requested that the claims asserted against it be denied in their entirety.

Respondent, Schneider Securities, Inc. requested that the Claimant's claims be dismissed with prejudice and requested costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Michael A. Wynn did not file a Statement of Answer or a Submission Agreement, but appeared and testified at the hearing. Wynn confirmed on the record that he had received the Statement of Claim, the notice of the hearing and notification of the arbitrators in accordance with Sections 21, 25 and 26 the Code of Arbitration Procedure (the "Code"). The arbitrators determined that Wynn was required to submit to arbitration in accordance with Section 12 of the Code.

According to a letter from Claimant dated July 11, 1995, Simpson and Kemper Securities reached a settlement agreement on the claims between them.

The parties have agreed that the Award in this matter may be executed in counterpart copies and to receive conformed copies of the Award while the original(s) remain on file with the NASD.

At the conclusion at the claimant direct case, Dickinson & Co. and Schneider Securities, Inc. made a motion for a directed verdict. After hearing the arguments of the parties, the arbitrators decided to defer ruling on the motion. The arbitrators decided after the conclusion of the hearing that the motion was overruled.

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 deter

mination as follows:

1. The Statement of Claim is hereby denied in its entirety;
2. All relief requests not specifically granted are hereby denied in their entirety; and
3. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

7 sessions X \$750.00 = \$5,250.00

The National Association of Securities Dealers, Inc. ("NASD") shall retain the claim filing fee in the amount of \$200.00 and the hearing session deposit in the amount of \$750.00 previously submitted by the Claimant. Respondent, Schneider Securities, Inc. is hereby liable for and shall pay to Claimant, Marie J. Simpson the sum of \$950.00 as reimbursement. Respondent, Schneider Securities, Inc. is hereby liable for and shall pay to the NASD the sum of \$1775.00 in forum fees. Respondent, R.G. Dickinson & Company is hereby liable for and shall pay to the NASD the sum of \$2,725.00 in forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

Sam Brower, Esq.

March 18, 1996

Sam Brower, Esq.

W. Russell Bowie, Esq.

March 18, 1996

W. Russell Bowie, Esq.

Thomas A. Thornhill, Jr.

March 26, 1996

Thomas A. Thornhill, Jr.

Date served by the NASD: April 1, 1996