

FINAL ORDER

NASD Regulation, Inc. Office of Dispute Resolution
In the Matter of the Arbitration Between

William E. Brookhauser, and
Virginia Brookhauser,
Claimants,

v.

No. 95-01509

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

REPRESENTATION OF PARTIES

William E. Brookhauser, and Virginia Brookhauser ("Claimants") were represented by Bruce Pearson from Fargo, North Dakota.

Respondent Dickenson & Co. ("Respondent") was represented by Lisa A. Nielsen, Esq., of Greensfelder, Hemker & Gale, P.C.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about March 24, 1995. Claimants' Submission Agreement was signed on October 14, 1994.

Respondent's Statement of Answer was filed on or about July 14, 1995. Respondent's Submission Agreement was signed on July 14, 1995.

HEARING INFORMATION

Hearing date: September 25, 1996; One (1) session.

Pursuant to §10303 of the Code of Arbitration Procedure (the "Code"), a hearing was convened telephonically for the parties to present their respective positions concerning Respondent's Motion to Dismiss.

CASE SUMMARY

Claimants alleged, but stated that they were not limited to, the following: Securities fraud; misrepresentation; commission of material fact; breach of fiduciary responsibility; and lack of due diligence. The allegations arose out of a purchase of one (1) unit of a partnership interest in North

Port Golf Associates L.P.I. ("NPGA") in 1989.

Unless otherwise admitted in its Answer, Respondent denied the allegations contained in the Statement of Claim. In addition, Respondent asserted the following affirmative defenses: The Statement of Claim fails to state a claim upon which may be granted; Claimants' claim is barred by the doctrines of waiver and estoppel; Claimants' claim is barred, in whole or in part, by the applicable statute of limitations; Claimants have suffered no damages as a result of any alleged wrongful action or inaction on the part of Respondent; Claimants' claims are barred or reduced by reason of their own negligence and failure to exercise such due diligence with respect to their investments as would be expected of a reasonable person under the same circumstances; and Claimants' losses, if any, were caused or contributed to by acts of parties over whom Respondent did not have control and for whom Respondent is not liable.

RELIEF REQUESTED

In their Statement of Claim, Claimants were seeking damages in the amount of: \$100,000 principal; \$35,000 Interest; \$10,000 rep. fees; and \$1,000 filing fees.

Respondent requested that the arbitrators dismiss Claimants' claims in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

On or about August 19, 1996, Respondent filed with the NASD a Motion to Dismiss Claimants' Statement of Claim due to Claimants' failure to respond to Respondent's discovery requests. A request for a response to the motion was sent to Claimants' representative on August 23, 1996. The request asked for a response to Respondent's motion by no later than September 2, 1996. The NASD did not have a record of receipt of a response, and on September 10, 1996, the motion was forwarded to the panel for decision. A hearing on the motion was set for September 25, 1996 with arbitrators McEachen and Toplikar presiding. Upon due consideration, the undersigned arbitrators decided to grant the motion and dismiss the case pursuant to §10305 of the Code.

AWARD

After review of the Respondent's Motion to Dismiss Claimants' Statement of Claim and all ancillary documents pertaining to the claim and the motion, and hearing oral arguments from the parties on May 4, 1995, the undersigned arbitrators have unanimously decided in full and final resolution of the issues submitted for determination pursuant to Section 14(a) of the Code.

1. Claimants William E. Brookhauser's, and Virginia Brookhauser's claims are, and each of them, dismissed pursuant to §10305 of the Code, and refer the parties to the remedies provided by applicable law

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

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session. There was one (1) session x \$500 = \$500 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimants.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall be paid a non-refundable member surcharge in the amount of \$300 by the Respondent.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.



Richard E. McEachen
Public Arbitrator, Acting Chair

Dated:

Oct 9, 1996



Frank A. Toplikar
Industry Arbitrator

Oct 7, 1996