

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Angelo Zenez

95-01645

Name of Respondent

Dickinson & Co.

REPRESENTATION

For Claimant: Angelo Zenez ("Zenez") was represented by Jeffrey W. Finke, Esq. of Raleigh, Helms & Finke, located in Chicago, Illinois.

For Respondent: Dickinson & Co. ("Dickinson") was represented by Barbara Bennett, Esq. of Dickinson & Co., located in Des Moines, Iowa.

CASE INFORMATION

Statement of Claim filed: April 3, 1995.

Claimant's Submission Agreement signed on: February 24, 1995.

Claimant's Clarification of Relief filed: December 14, 1995.

Claimant's Prehearing Memorandum filed on or about: January 26, 1996.

Statement of Answer filed by Respondent on: August 8, 1995.

Respondent's Submission Agreement signed on: August 8, 1995 by Barbara Bennett, Vice President-Legal, Dickinson & Co.

HEARING INFORMATION

Pre-Hearing Conference: January 22, 1996 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: January 26, 1996 for Two (2) sessions;
May 15, 1996 for Two (2) sessions;
May 16, 1996 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Zenez alleged that Respondent Dickinson violated the Americans with Disabilities Act ("ADA") when it terminated Zenez, a diabetic who had just begun receiving kidney dialysis treatments, after he had been employed for a period of three months and without attempting to reasonably accommodate his disability within the meaning of the ADA.

Respondent Dickinson denied the material allegations of the Statement of Claim, asserting that Zenez was terminated because he failed to attend work punctually, was absent without cause, and failed to build commission business sufficient to justify employment as a stockbroker. In addition, Dickinson alleged that it made more than reasonable accommodations to Zenez in an effort to afford him a chance to earn and retain his position as stockbroker, but he was unable to fulfill the basic requirements of his position. In addition, Dickinson asserted several affirmative defenses.

RELIEF REQUESTED

Claimant requested entry of an award against Dickinson for back pay and commission payments estimated to be approximately \$25,000.00; compensatory damages plus punitive damages totaling approximately \$200,000.00; attorneys' fees and costs, including expert witness fees, costs of filing arbitration and the costs associated with filing a federal court claim; and an order requiring Dickinson to inform all regulatory agencies that his termination was incorrect and should be eliminated from his record.

Respondent requested that the Claimant's claims be dismissed in their entirety.

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 Statement of Claim is dismissed with prejudice and denied in its entirety;

2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein; and
3. All relief not specifically awarded is hereby denied.

OTHER COSTS

Respondent Dickinson & Co. is liable for and shall pay to the NASD the sum of \$200.00 pursuant to Section 45 of the NASD Code of Arbitration Procedure.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One Pre-Hearing before One (1) Arbitrator = \$300.00; Six (6) hearing session x \$600.00 per hearing session = \$3,600.00; Total forum fees = \$3,900.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 claim filing fee paid by the Claimant, Angelo Zenez. Respondent Dickinson & Co. is liable for and shall pay to the NASD the sum of \$3,900.00 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Date

/s/ Stephen James Nagy, Esq.
Stephen James Nagy, Esq.
Public Arbitrator
Chairperson

July 19, 1996

/s/ Laurence S. Kahn, Esq.
Laurence S. Kahn, Esq.
Public Arbitrator

July 19, 1996

/s/ Robert L. Sanders
Robert L. Sanders
Industry Arbitrator

July 25, 1996

For NASD Use Only

Date of Service of Award: July 29, 1996