

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Steven D. Falke,
Claimant,

v.

No. 95-01818

Dickenson & Co.,
Diane Welsh,
Brian McVey, and
Kelly Sutton.
Respondents.

REPRESENTATION OF PARTIES

Steven D. Falke ("Claimant") was represented by Jane L. Stafford, Esq. of Watson and Marshall, Kansas City, Missouri.

Dickenson & Co., Diane Welsh, Brian McVey, and Kelly Sutton ("Respondents") were represented by Barbara Bennett, Esq. of Dickenson & Co., Des Moines, Iowa.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about April 10, 1995. Claimant's Submission Agreement was signed on April 10, 1995. Claimant's Amendment to the Statement of Claim was filed on or about August 21, 1995.

Respondents' joint Statement of Answer was filed on or about June 9, 1995. Respondents' Submission Agreements were signed on June 9, 1995, June 8, 1995, June 8, 1995, and June 8, 1995, respectively. Respondents' joint Answer to Claimant's Amended Statement of Claim was filed on or about September 20, 1995.

HEARING INFORMATION

A prehearing conference was held on October 23, 1995 for one (1) session by conference call.

The hearing was held on November 6, 1995 in Kansas City, Missouri for a total of three (3) sessions.

CASE SUMMARY

Claimant alleged that Respondents: made unsuitable recommendations and transactions; misrepresented expectations and created a heightened sense of urgency to create a deceptive environment to purchase the stocks listed below; violated federal and Kansas law through the sale of unregistered securities to him; and failed to respond to a specific complaint letter regarding the trading and activities occurring in his account. The allegations arose out of transactions in: Trinity Biotech and ADR stock; Royal Grip-NASDAQ; Parkervision-NASDAQ; Trilite-NASDAQ; Doubletree-NYSE; Wave Systems-NASDAQ; and Southwest Airlines-NYSE.

Respondent denied the allegations set forth in the Statement of Claim and the Amended Statement of Claim. Respondents specifically stated that Claimant still held his 5,000 shares of Trinity, and did not sell them on April 7, 1995. Respondents further stated that: Claimant's unrealized losses on Trinity, as of September 20, 1995, were \$6,400.00; Claimant also continues to hold his position in Tri-Lite; they never sold any securities to Claimant that violated federal, state or Kansas law and asserted that the securities purchased by Claimant were exempt from registration under the Kansas Securities Act and regulations promulgated thereto; all of Claimant's actions were informed and voluntary and he continues to transact business with Respondents; and at all times Claimant controlled his own account. In addition, Respondents asserted the following affirmative defenses: Claimant failed to state a claim upon which relief may be granted; Claimant is barred from recovery by the doctrines of waiver and estoppel; Claimant suffered no damages as a result of any alleged wrongful action by Respondents; Claimant's claim is barred by reason of his own negligence; Claimant's losses, if any, were caused or contributed to by acts of parties over whom Respondents had no control and for whom Respondents are not responsible; and Claimant's claims are barred in whole or in part by applicable statutes of limitations.

RELIEF REQUESTED

Claimant requested an award in the amount of \$22,288.00, plus interest and costs, including attorney's fees.

Respondent requested that the claims asserted against it be denied in its entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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, and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Dickenson & Co. is liable for, and shall pay to the Claimant the sum of \$6,700.00 plus interest at the rate of 8% compounded annually from the date of this Award as satisfaction of his claims made herein.

Respondent Dickenson & Co. is liable for, and shall pay to the Claimant the sum of \$150.00 as an award of one-half (1/2) of the Claimant's hearing session deposit.

All claims/requests for relief not specifically set forth herein are, and each of them, denied and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$300.00 per hearing session and \$300 for each prehearing conference, if any. There were 3 regular sessions x \$300.00 = \$900.00 and 1 prehearing session @ \$300.00 or \$1,200.00 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 prehearing 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 \$100.00 and shall retain as forum fees the hearing session deposit in the amount of \$300.00 previously deposited with the NASD by the Claimant.

Pursuant to §45 of the Code, the Dickenson & Co. is liable for the member surcharge fee in the amount of \$200.00.

Additional forum fees in the amount of \$450.00 are assessed against the Claimant.

Additional forum fees in the amount of \$450.00 are assessed against Dickenson & Co..

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

Matthew C. Haverly
Matthew C. Haverly
Public Arbitrator, Presiding Chair

s/s

Dated:
December 13, 1995