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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

**Name of Claimants**

John Dedyo  
John J. Dedyo  
John P. McGuire

95-03259

**Name of Respondents**

Schroder Wertheim & Co. Inc.  
Dickinson & Co.  
William Hecht

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**REPRESENTATION**

For Claimants John Dedyo, John J. Dedyo and John P. McGuire (collectively referred to as "claimants") appeared James C. DeNorscia, Esq., of the law firm of Sonageri & Fallon located in Garden City, New York.

For Respondents Schroder Wertheim & Co., Inc., ("Schroder"), Dickinson & Co. ("Dickinson"), and William Hecht ("Hecht") appeared Barbara Bennett, in-house counsel for Dickinson & Co. located in Des Moines, Iowa.

**CIINFORMATION**

Statement of Claim was filed on July 3, 1995. Claimant John Dedyo's Submission Agreement was signed on June 21, 1995. Claimant John J. Dedyo's Submission Agreement was signed on June 28, 1995. Claimant John P. McGuire's Submission Agreement was signed on June 21, 1995.

Joint Statement of Answer was filed by Schroder and Dickinson on: September 22, 1995. Schroder's Submission Agreement was signed on November 3, 1995. Dickinson's Submission Agreement was signed on September 22, 1995.

Statement of Answer was filed by Hecht on September 21, 1995. Hecht's Submission Agreement was signed on November 13, 1995.

**HEARING INFORMATION**

Pre-Hearing Conference:	June 4, 1996	1 session
Hearing Dates/Sessions:	June 26, 1996	2 sessions
	June 27, 1996	2 sessions
	October 15, 1996	2 sessions
	October 16, 1996	2 sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc.: located in New York, New York.

**CASE SUMMARY**

Claimants alleged that Hecht was the account executive employed by Dickinson who was responsible for their accounts. Claimants also alleged that Schroder was the clearing broker for Dickinson and, as such, entered into margin account agreements with claimants to finance the numerous trades made by Dickinson. Claimants contended that Schroder, by failing to perform adequate and necessary supervisory functions and by failing to implement safeguards with respect to the acts, actions and activities of Dickinson and Hecht, aided and abetted or, at the very least, by its inaction condoned their wrongful and improper acts, actions and omissions.

According to claimants, Dickinson and Hecht engaged in a fraudulent two-call scheme which commenced in March 1992 when they each received an unsolicited introductory telephone call from Hecht. Claimants alleged that Hecht falsely represented that Interactive Network, Inc. ("INNN") was a safe, long-term and exceptional investment situation. In addition, claimants, further alleged that, on or about March 1992 through August 1994, Dickinson and Hecht, through intentional and reckless misrepresentations and omissions of material fact and in disregard of their needs and objectives, induced them into purchasing thousands of INNN shares and warrants on margin. Further, claimants maintained that, during the winter of 1992 and 1993, they accepted Dickinson and Hecht's advice and did not sell INNN in spite of its continual drop in share price. Claimants further maintained that, although they had never traded on margin, they placed their accounts on margin based upon Hecht's recommendations. Claimants, also alleged that respondents liquidated nearly all of their account holdings in order to meet Schroder and Dickinson's margin calls which resulted in large losses.

In addition, claimants asserted that they informed Hecht that their investment objectives were conservative and included conservation of principal, long-term capital appreciation and production of income. Moreover, claimants contended that Dickinson and Hecht were, or should have been, aware of their conservative investment objectives, their lack of investment expertise, and that their investment accounts constituted a substantial portion of their respective life savings. Claimants further maintained that they each relied solely and completely upon the investment recommendations and representations made by Dickinson and Hecht and that they authorized transactions in their accounts based upon a belief as to the integrity and accuracy of information provided by Dickinson and Hecht, as well as specific statements received from and allegedly investigated and researched by Dickinson and Hecht, and upon the further belief that

each such solicited transaction was in accordance with and suitable for their stated objectives.

Claimants contended that respondents: 1) breached their fiduciary duties and obligations and engaged in wrongful and improper acts, actions and omissions; 2) deceived and made misrepresentations in a willfully false and fraudulent manner; 3) made misleading and inaccurate representations; 4) executed unauthorized transactions; 5) failed to follow claimants' desires and instructions and wrongfully placed claimants in an unsuitable and precipitous financial positions of high risk by the use of excessive margin transactions motivated by an intention to generate increased production of commissions; and 6) failed to **perform** adequate and necessary supervisory functions and to implement safeguards with respect to the acts, actions and activities of Hecht.

Dickinson and Schroder maintained that the securities purchased by claimants were appropriate in light of their education, financial situation and investment goals. In addition, Dickinson and Schroder maintained that claimants stated that their investment objective was growth and that they were prepared to tolerate risk. Moreover, Dickinson and Schroder contended that the decline in the value of claimants' portfolio did not occur because of churning or fraud, but because INNN reacted to market forces.

Dickinson and Schroder maintained that claimants chose to open margin accounts after being informed of the potential risks of purchasing securities on margin. In addition, Dickinson and Schroder contended that claimants **were** fully informed of any margin requirements and were notified when additional deposits were necessary. Dickinson and Schroder further contended that the margin agreements executed by claimants authorized Dickinson to sell securities in their individual accounts without providing prior notice to them.

Dickinson and Schroder maintained that Dickinson did not allow discretionary accounts and that Hecht was neither authorized to exercise nor exercised any discretion over the claimants' accounts. Moreover, Dickinson and Schroder maintained that claimants were informed of and voluntarily entered into each transaction. Dickinson and Schroder contended that claimants discussed with their broker the stocks they owned or were considering purchasing, the market in general, and the status of their account transactions. Dickinson and Schroder further contended that, although claimants received confirmations and monthly account statements, claimants did not seek to rescind any purchase or sale, nor did they timely object to any of their transactions. In addition, Schroder contended that, as a clearing broker, it had no direct communication with claimants and that it did not control or supervise any of Dickinson's employees.

As affirmative defenses, Dickinson and Schroder maintained that the Statement of Claim failed to state a claim upon which relief may be granted; that claimants were barred from recovery by reason of the doctrines of waiver and estoppel; that claimants suffered no damages as a result of any alleged wrongful action or inaction on the part of respondents; that the claims were barred by reason of claimants' own negligence and failure to exercise such diligence as would be expected of a reasonable person; that claimants' losses, if any, were caused or contributed to by the acts of parties over whom respondents did not have control and for whom respondents were not responsible; and that the claims were barred by the applicable statute of limitations.

Hecht contended that claimants did not believe themselves to have been deceived, defrauded or misled considering that they continued to **deal** with him even after the **alleged** incidents occurred. Hecht maintained that while claimants were earning substantial profit they were pleased with him and the **firms** he represented. In addition, Hecht maintained that claimants received information about the companies in which they were investing and that they were **aware** that investing in **INNN** represented substantial risk. Respondents also contended that none of the claimants were "cold called" but rather, were referred to him.

### **RELIEF REQUESTED**

Claimants requested that the Panel:

- a. Award John Dedyo no less than Twenty Five Thousand Dollars (**\$25,000.00**) for actual losses in his accounts, plus margin interest, commission charges and mark-ups.
- b. Award John J. Dedyo no less than Four Thousand (**\$4,000.00**) for actual losses in his accounts, plus margin interest, commission charges and mark-ups.
- c. Award John P. McGuire no less than Seventy Five Thousand (**\$75,000.00**) for actual losses in his accounts, plus margin interest, commission charges and mark-ups.
- d. Award claimants punitive damages for five (5) times the damages each awarded to John Dedyo, John J. Dedyo and John P. McGuire.
- e. Award claimants the costs of this arbitration together with reasonable attorneys' fees.
- f. Award claimants such other and further relief as the panel deems just and proper.

Respondents Dickinson and Schroder requested that claimants' claims be dismissed in their entirety and costs assessed against claimants.

### **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. All claims are dismissed against respondent **Schroder**.
2. Respondents Dickinson and Hecht be and hereby are jointly and severally liable and shall pay claimant John Dedyo the sum of **\$4,700.00**.
3. Respondents Dickinson and Hecht be and hereby are jointly and **severally** liable and shall pay claimant John J. Dedyo the sum of \$750.00.
4. Respondents Dickinson and Hecht be and hereby are jointly and severally liable and shall pay claimant John P. **McGuire** the sum of **\$4,850.00**.
5. Claimants' request for interest is hereby denied.
6. Claimants' request for punitive damages is hereby denied.
7. Claimants' request for costs is hereby denied, except that Dickinson be and hereby is liable and shall pay claimants the sum of \$1000.00 to reimburse claimants for the hearing session deposit previously paid to the NASD.

#### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$250.00 non-refundable filing fee previously deposited by claimants and have assessed the following forum fees:

8 hearing sessions x \$1000.00 = **\$8,000.00**

Respondent Dickinson be and hereby is liable and shall pay to the NASD the sum of **\$8,000.00** representing the total amount of forum fees assessed. Claimants previously deposited \$1000.00 with the NASD. Therefore, Dickinson is liable and shall pay to the NASD the sum of **\$7,000.00**, representing the total outstanding forum fees.

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

96-120-0

Concurring Arbitrators' Signatures

  
Marilyn J. Salzman, Esq.  
Chairperson--Public Arbitrator

\_\_\_\_\_  
Kenneth M. Felder  
Public Arbitrator

Dissenting Arbitrator's Signature

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Thomas W. Smith, Esq. :  
Industry Arbitrator

Date of decision: December 12, 1996


I, Marilyn J. Salzman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
Marilyn J. Salzman, Esq.

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Concurring Arbitrators' Signatures

\_\_\_\_\_  
Marilyn J. Salzman, Esq.  
Chairperson--Public Arbitrator


  
\_\_\_\_\_  
Kenneth M. Felder  
Public Arbitrator

Dissenting Arbitrator's Signature

\_\_\_\_\_  
Thomas W. Smith, Esq.  
Industry Arbitrator

Date of decision: December 12, 1996

**I, Kenneth M. Felder**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this **instrument** which is my award.

  
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Kenneth M. Felder

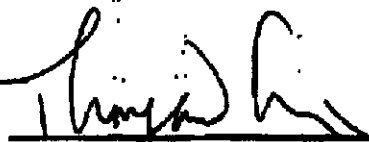
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Concurring Arbitrator's Signature

\_\_\_\_\_  
Marilyn J. Salzman, Esq.  
Chairperson - Public Arbitrator

\_\_\_\_\_  
Kenneth M. Felter  
Public Arbitrator

Dissenting Arbitrator's Signature

  
\_\_\_\_\_  
Thomas W. Smith, Esq.  
Industry Arbitrator

Date of decision: December 12, 1996

I, Thomas W. Smith, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Thomas W. Smith, Esq.