

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Marc W. Vraciu

NASD Arbitration

No. 95-03743

Name of Respondents and Third-Party Claimants

John H. Dakin
Dakin Securities, Inc.

Name of Third-Party Respondent

Allan G. Bortel

REPRESENTATION

For Claimant: Gail J. Saliterman, Esq., Chandler, Wood, Harrington
& Maffly, San Francisco, California

For Respondents: Terry M. Gordon, Esq. and Richard A. Hoyer, Esq.,
Epstein Becker & Green, San Francisco, California

For Third-Party Respondent: Allan G. Bortel, Tiburon, California

CASE INFORMATION

Statement of Claim filed: August 1, 1995

Claimant's Submission Agreement signed: July 31, 1995

Joint Statement of Answer filed by Respondents: September 26, 1995

Third-Party Claim filed by Respondents: February 29, 1996

Third-Party Response to Claim for Equitable Indemnity filed: April 8, 1996

Respondents' Submission Agreements signed as follows:

John H. Dakin: October 10, 1995

Dakin Securities, Inc.: September 26, 1995

Third-Party Respondent Allan G. Bortel's Submission Agreement signed: April 8, 1996

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

May 23, 1996 (one session)

Hearing Date(s)/Session(s): May 23, 1996 (one session)

May 24, 1996 (three sessions)

Hearing Location:

San Francisco, California

CASE SUMMARY

Claimant Marc W. Vraciu (Vraciu) alleged that Respondents Dakin Securities, Inc. (Dakin Securities) and John H. Dakin (Dakin) wrongfully terminated his employment on August 3, 1994 and fraudulently induced Claimant both to leave his employment with Sutro & Co. Incorporated (Sutro) and to purchase shares of stock in Dakin Securities.

Respondents Dakin Securities and Dakin denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents alleged that as a matter of law, Claimant's claims against Mr. Dakin individually are barred by the "Manager's Privilege"; there was good cause to terminate Claimant's employment with Dakin Securities; Claimant was an at-will employee; Claimant had no entitlement to notice or severance; and that Claimant's discharge was justified and no notice was required.

In their Third-Party Claim, Respondents alleged that Claimant's damages, if any, were not proximately caused in whole or in part by Respondents Dakin Securities and Dakin. Respondents further alleged that if they are found responsible to Claimant as the result of the incidents and occurrences described in Claimant's

Statement of Claim, Respondents' liability would be based in whole or in part upon the conduct of Allen G. Bortel (Bortel); and that Respondents are therefore entitled to whole or partial indemnity from Bortel.

Third-Party Respondent Bortel alleged that his conduct in inducing Claimant Vraciu to work for and invest in the securities of Dakin Securities was only at the express request of Mr. Dakin, Chief Executive Officer of Dakin Securities. Mr. Bortel further alleged that the firm desperately needed more brokers and Bortel knew Vraciu from their association at Sutro in 1991. Mr. Bortel further alleged that Dakin hired Vraciu as a broker and allowed him to buy shares of Dakin stock, becoming the third largest inside stockholder after Dakin and Bortel.

RELIEF REQUESTED

Claimant Vraciu requested damages in the following amounts:

1. \$42,500.00 representing the monies Mr. Vraciu was obligated to repay to Sutro after terminating his employment with Sutro at the end of May 1993;
2. \$36,000.00 in principle, \$7,200.00 in interest at 8 percent since August 1, 1993 on \$72,000.00 and on \$36,000.00 since January 1, 1995 and \$2,000.00 in attorneys' fees and for a total of \$45,280.00 lost on his purchase of an equity interest in Dakin Securities. (Claimant asserted that a Mr. Dorman paid Claimant \$36,000.00 for this equity interest on December 31, 1994); and
3. At least \$220,000.00 for lost income based on a modest estimate of the commissions Mr. Vraciu would have earned at Dakin Securities or Sutro from the book of business he brought to Dakin Securities.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 National Association of Securities Dealers, Inc. (NASD).

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, including the positions of the parties relative to various motions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimant Marc W. Vraciu are dismissed.
2. All claims by Respondents Dakin Securities, Inc. and John H. Dakin are dismissed.
3. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$750.00 hearing session deposit previously deposited by Marc W. Vraciu and shall retain the \$250.00 hearing session deposit previously deposited by Dakin Securities, Inc. Forum fees are to be split among Marc W. Vraciu, Dakin Securities, Inc. and Allan G. Bortel and are calculated as follows:

One pre-hearing session @ \$300.00/session	=	\$ 300.00
Four hearing sessions @ \$750.00/session	=	<u>\$3,000.00</u>
Total fees assessed	=	\$3,300.00
Vraciu's share (one third)	=	\$1,100.00
Credit for hearing deposit	=	\$ 750.00
Balance due	=	\$ 350.00
Dakin Securities' share (one third)	=	\$1,100.00
Credit for hearing deposit	=	\$ 250.00
Balance due	=	\$ 850.00
Bortel's share (one third)	=	\$1,100.00
Balance due	=	\$1,100.00

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

ARBITRATORS

Name Public / Industry

Frank Weaver	Industry Arbitrator
Edgar N. Stone	Industry Arbitrator
James R. Dickson	Industry Arbitrator

Concurring Arbitrators' Signatures

Frank Weaver

Edgar N. Stone



James R. Dickson

Date of Decision: May 24, 1996

Date served: 6/24/96

ARBITRATORS

Name Public / Industry

Frank Weaver	Industry Arbitrator
Edgar N. Stone	Industry Arbitrator
James R. Dickson	Industry Arbitrator

Concurring Arbitrators' Signatures

Frank Weaver

Edgar N. Stone

Edgar N. Stone

James R. Dickson

Date of Decision: 6/20/96

Date served: 6/26/96

ARBITRATORS

Name _____ Public / Industry

Frank Weaver

Industry Arbitrator

Edgar N. Stone

Industry Arbitrator

James R. Dickson

Industry Arbitrator

Concurring Arbitrators' Signatures



Frank Weaver

Edgar N. Stone

James R. Dickson

Date of Decision: _____

Date Served: 6/24/96