

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimants

Jay Weiner, Barry S. Rothman and et al.

95-04047

Name of Respondents

Dickinson & Co.
John W. Laurienti

REPRESENTATION

Claimants Jay Weiner, Barry S. Rothman, Steven M. Slovon, Michael Glazer, Ellen Glazer, Marc A. Glazer and Brenda L. Glazer were represented by Ronald B. Rubin, Esquire and Jonathan S. Feld, Esquire of the law firm of Brand Lowell & Ryan, Washington, D.C.

Respondent Dickinson & Co. was represented by Terri L. Combs, Esquire, of the law firm of Faegre & Benson LLP, Des Moines, Iowa.

Respondent John W. Laurienti was represented by Simon S. Kogan, Esquire, New York, NY.

All action in the proceeding against Respondent Mark J. Hamel was stayed on January 10, 1997 pursuant to Section 362 of the Bankruptcy Code as a result of his filing a petition for liquidation under Chapter 7 in the U.S. Bankruptcy Court, District of Massachusetts. Respondent Hamel was discharged from bankruptcy by the Bankruptcy Court on April 7, 1997.

CASE INFORMATION

The Statement of Claim was filed on August 21, 1995.

The Submission Agreement of Dr. Jay Weiner was signed on October 6, 1995.

The Submission Agreement of Dr. Barry S. Rothman was signed on August 24, 1995.

The Submission Agreement of Steven M. Slovon was signed on October 6, 1995.

The Submission Agreement of Michael Glazer was signed on August 25, 1995.

The Submission Agreement of Ellen Glazer was signed on August 25, 1995.

The Submission Agreement of Marc A. Glazer was signed on August 25, 1995.

The Submission Agreement of Brenda L. Glazer was signed on August 25, 1995.

The Statement of Answer of Respondent Dickinson & Co. was filed on January 22, 1996.

The Submission Agreement of Respondent Dickinson & Co. was signed on February 20, 1996.

The Statement of Answer of Respondent John W. Laurienti was filed on February 6, 1996.

The Submission Agreement of Respondent John W. Laurienti was signed on October 6, 1995.

The Third-Party Claim of Respondent Dickinson & Co. was filed on September 25, 1996.

HEARING INFORMATION

Prehearing telephone conferences were held as follows:

August 28, 1996 (1 session)
October 23, 1996 (1 session)

The evidentiary hearing was held in Washington, D.C. as follows:

November 19, 1996 (2 sessions)
November 20, 1996 (2 sessions)
January 27, 1997 (2 sessions)
January 28, 1997 (2 sessions)
January 29, 1997 (2 sessions)
March 19, 1997 (2 sessions)
March 20, 1997 (2 sessions)
March 21, 1997 (2 sessions)
March 24, 1997 (3 sessions)
March 25, 1997 (2 sessions)
March 31, 1997 (2 sessions)

CASE SUMMARY

Claimants alleged, among other things, that Respondent Hamel recommended that Claimants purchase shares of Fairmont Resources, Inc.; that Hamel's customers, including Claimants, purchased more than 600,000 shares of Fairmont Resources from February 18, 1993 to May, 1993; that Hamel received undisclosed special compensation for such purchases from the promoters of Fairmont; that Respondent Laurienti was branch office manager of the office of Respondent Dickinson in which Respondent Hamel conducted his business and, as branch office manager, approved all trades in Fairmont Resources by Claimants in their Dickinson accounts; that Respondent Laurienti did not obtain approval of Respondent Dickinson's compliance department prior to approving the trades, as required by Dickinson's policy regarding solicitation of purchases of low-priced securities, and did not contact Respondent Dickinson's compliance director regarding the volume of trading activity in Fairmont Resources until March, 1993; that Respondent Laurienti forwarded information about Fairmont Resources to the compliance department at the request of the compliance director, but the compliance director did not review the material until sometime in May; and that during that period Respondent Laurienti continued to approve purchases of Fairmont Resources by Hamel's customers. Claimants alleged further that Respondent Hamel's recommendations were unsuitable for Claimants; that Respondent Hamel's activities constituted a stock manipulation; that Respondent Dickinson's supervisory procedures were inadequate and ineffective; and that Respondent Dickinson failed to disclose material information that would have enabled Claimants to evaluate the risk of holding their Fairmont Resources stock. Claimants alleged that they suffered damages as a result of the activities of Respondent Dickinson and its employees, Respondent Laurienti and Respondent Hamel.

Respondent Dickinson denied all allegations of wrongdoing alleged against it in the Statement of Claim. Respondent Dickinson maintained that it had no knowledge of Respondent Hamel's unlawful activities; that Claimants are wealthy, sophisticated investors for whom Fairmont Resources was a suitable investment; that Claimants conducted independent investigations of the business of Fairmont Resources

and were aware of the risk and speculative nature of their investments and that based on those investigations, Claimants elected not to sell their Fairmont Resources stock; that Respondent Dickinson directed Respondent Hamel to stop trading Fairmont Resources when its compliance department learned that Fairmont Resources had not been approved for sale, at which time Respondent Hamel resigned; that Dickinson was not aware of Respondent Hamel's special compensation until almost a year after Respondent Hamel left the employ of Respondent Dickinson; and that Respondent Dickinson's supervisory procedures were reasonably designed to detect irregularities and in fact did so.

Respondent Dickinson also asserts the affirmative defenses that Claimants' claims are barred by applicable statutes of limitations, the doctrines of laches, estoppel and waiver, and the doctrine of unclean hands.

Respondent Dickinson asserted a third-party claim against Respondent Hamel for any losses resulting from Claimants' claims. The third-party claim was stayed as a result of Respondent Hamel's bankruptcy.

Respondent Laurienti denies Claimants' allegations against him. Respondent Laurienti maintains that he reasonably believed that Respondent Hamel's activities were proper, inasmuch as Respondent Hamel was an experienced broker in the Boston office with no past record of improprieties; that he carefully supervised Respondent Hamel by reviewing trade tickets on a daily basis and discussing Respondent Hamel's activities with the compliance department.

Respondent Laurienti also asserts the affirmative defenses of laches, statute of limitations, estoppel and waiver, unclean hands and ratification.

RELIEF REQUESTED

Claimants requested relief in an amount not less than \$600,000, punitive damages, attorneys' fees and other costs, and prejudgment and postjudgment interest.

Respondents Dickinson and Laurienti requested that the Statement of Claim be dismissed in its entirety. Respondent Laurienti requested that costs and disbursements including reasonable attorneys fees be 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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent Dickinson & Co. is liable to Claimant Weiner in the amount of \$18,800; to Claimant Slovon in the amount of \$7,144; to Claimant Rothman in the amount of \$102,460; and to the Glazer Claimants in the amount of \$23,500. Respondent Laurienti is liable to Claimant Weiner in the amount of \$1,200; to Claimant Slovon in the amount of \$456; to Claimant Rothman in the amount of \$6,540; and to the Glazer Claimants in the amount of \$1,500.
2. That the claim for punitive damages is denied.
3. That the claim for prejudgment and postjudgment interest is denied.
4. That each party shall pay its own costs and expenses with the exception of those specified in the section on forum fees below.
5. That any relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

2 Prehearing conferences x \$300.00	=	600.00
23 Hearing sessions x \$750.00	=	<u>17,250.00</u>
Total Forum Fees	=	<u>17,850.00</u>

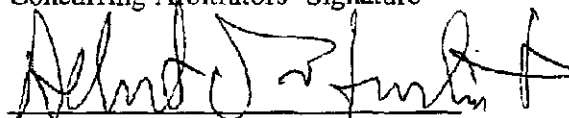
Forum Fees are assessed to Claimants at fifty percent and to Respondent Dickinson & Co. at fifty percent. Claimants are to receive credit for the \$750.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimants of \$7,875.00. Respondent has a net assessment due of \$8,625.00.

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

Date

5/29/97

Concurring Arbitrators' Signature



Albert D. Sturtevant, Esq., Chairman
Public Arbitrator

Pierre J. Dolan
Industry Arbitrator

Charles L. Marinaccio, Esq.
Public Arbitrator

Date Award Served by the NASD Regulation:

May 29, 1997

Date

Concurring Arbitrators' Signature

Albert D. Sturtevant, Esq., Chairman
Public Arbitrator

5/29/1997

Pierre J. Dolan
Pierre J. Dolan
Industry Arbitrator

Charles L. Marinaccio, Esq.
Public Arbitrator

Date Award Served by the NASD Regulation:

May 29, 1997

Date

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Albert D. Sturtevant, Esq., Chairman
Public Arbitrator

Pierre J. Dolan
Industry Arbitrator

May 29, 1997

Charles L. Marinaccio
Charles L. Marinaccio, Esq.
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May 29, 1997