

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Glenda J. Belz, Donald E. Helms, Robert L. Nelson,
Pauline Esslinger and Waymer Esslinger,
Vivian Johnson and Robert Johnson, and Doris B. Burton,

Claimants,

and

No. 95-04093

Dickinson & Co.,

Respondent,

REPRESENTATION OF PARTIES

Claimants Glenda J. Belz, Donald E. Helms, Robert L. Nelson, Pauline Esslinger and Waymer Esslinger, Vivian Johnson and Robert Johnson, and Doris B. Burton were represented by Joel A. Goodman, Esquire, of Goodman & Nekvasil, P.A., located in Safety Harbor, Florida.

Respondent Dickinson & Co. was represented by Barbara Bennett, Esquire, of Dickinson & Co., located in Des Moines, Iowa.

CASE INFORMATION

Claimants Glenda J. Belz, Donald E. Helms, Robert L. Nelson, Pauline Esslinger and Waymer Esslinger, Vivian Johnson and Robert Johnson, and Doris B. Burton's ("Claimants") Statement of Claim was filed on or about August 25, 1995. Claimants' First Amended Statement of Claim was filed on or about October 16, 1995. Claimants Second Amended Statement of Claim was filed on or about January 16, 1996. Claimant Glenda J. Belz's Submission Agreement was signed on July 24, 1995. Claimant Donald E. Helms' Submission Agreement was signed on August 21, 1995. Claimant Robert L. Nelson's Submission Agreement was signed on August 21, 1995. Claimants Pauline Esslinger and Waymer Esslinger's Submission Agreement was signed on August 18, 1995. Claimants Vivian Johnson and Robert Johnson's Submission Agreement was signed on August 24, 1995. Claimant Doris B. Burton's Submission Agreement was signed on October 11, 1995.

Respondent Dickinson & Co.'s Statement of Answer was filed on or about October 31, 1995. Respondent Dickinson & Co.'s Amended Statement of Answer was filed on or about May 31, 1996. Respondent Dickinson & Co.'s Submission Agreement was signed on October 26, 1995 by Barbara Bennett, Vice President-Legal of Dickinson & Co.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: August 13, 1996 for two (2) sessions;
August 14, 1996 for two (2) sessions;
August 15, 1996 for two (2) sessions;
August 16, 1996 for two (2) sessions; and
February 11, 1997 for three (3) sessions.

The hearing was held in Omaha, Nebraska.

CASE SUMMARY

Claimants Glenda J. Belz, Donald E. Helms, Robert L. Nelson, Pauline Esslinger and Waymer Esslinger, Vivian Johnson and Robert Johnson, and Doris B. Burton (hereinafter collectively referred to as "Claimants") alleged that respondent Dickinson & Co. ("Respondent"), through and by its brokers Michael Ray Pope, Scott Alan Lehner, Randolph J. Hansen, and Michael E. Nelson, made misrepresentations and omissions of material facts, and made unsuitable investments. Claimants stated that they were unsophisticated and inexperienced investors, not risk takers, and sought the protection of their savings pursuant to their investment objectives of stability and safety of principal and certainty of income. According to Claimants, Respondent's brokers stated that as long as Claimants followed their recommendations and advice, Claimants' accounts and principal investment would not be exposed to risk. Claimants asserted that they made the following investments in limited partnerships based on Respondent's brokers recommendations:

Glenda J. Belz			
Estimated Subscription Date	Number of Units	Investment	Amount Invested
8/13/90	40	Datronic Equipment Income Fund 19	\$20,000.00
8/17/90	40	Capital Preferred Yield Fund	\$10,000.00
8/20/90	100	Preferred Income Fund III	\$10,000.00
TOTAL AMOUNT INVESTED			\$40,000.00

Donald E. Helms			
Estimated Subscription Date	Number of Units	Investment	Amount Invested
1989	40	Leastec Income Fund V	\$10,000.00
9/15/89	20	Datronic Equipment Income Fund 18	\$10,000.00
9/5/90	5	Datronic Equipment Income Fund 19	\$2,500.00
TOTAL AMOUNT INVESTED			\$22,500.00

Robert L. Nelson			
Estimated Subscription Date	Number of Units	Investment	Amount Invested
Unknown	20	Datronic Equipment Income Fund 17	\$10,000.00
1989	28	Leastec Income Fund V	\$7,000.00
12/1/89	22	Leastec Income Fund V	\$5,500.00
9/14/89	30	Datronic Equipment Income Fund 18	\$15,000.00
11/1/89	145	CSA Income Fund III, L.P.	\$14,500.00
7/23/90	8	Datronic Equipment Income Fund 19	\$4,000.00
7/27/90	10	Datronic Equipment Income Fund 19	\$5,000.00
TOTAL AMOUNT INVESTED			\$61,000.00

Pauline Esslinger and Waymer Esslinger			
Estimated Subscription Date	Number of Units	Investment	Amount Invested
1/11/90	90	Datronic Equipment Income Fund 18	\$45,000.00
5/25/90	1,000	Textainer Equipment Income Fund II	\$20,000.00
TOTAL AMOUNT INVESTED			\$65,000.00

Vivian Johnson and Robert Johnson			
Estimated Subscription Date	Number of Units	Investment	Amount Invested
12/11/89	74	Datronic Equipment Income Fund 18	\$37,000.00
TOTAL AMOUNT INVESTED			\$37,000.00

Doris B. Burton			
Estimated Subscription Date	Number of Units	Investment	Amount Invested
9/10/90	320	Preferred Income Fund III	\$32,000.00
TOTAL AMOUNT INVESTED			\$32,000.00

Nonetheless, Claimants further asserted, Respondent and Respondent's brokers failed to inform Claimants of the risks of these limited partnerships and the unsuitable nature of concentrations in speculative securities. In addition, Claimants asserted that Respondent did not properly supervise its brokers so as to determine whether or not such investments would be suitable. Claimants argued that due to Respondent's brokers misrepresentations and omissions, such as their failure to inform and update Claimants on the market value of these investments and omitting to advise Claimants that these securities resulted in a high concentration of unsuitable limited partnership securities, Claimants were unaware that the original principal their brokers had invested for them in these limited partnerships had substantially diminished over the years resulting in combined losses of at least \$257,500. Claimants made the following legal claims: (1) breach of contract, resulting from violations of the NASD Rules of Fair Procedure, Art. III, §§ 1, 2, 18, 19, 21, and Appendix F under § 34, the NASD Rules of Fair Practice, Art. III, § 27, the Iowa Administrative Code and the Kansas Administrative Regulations, as well as Respondent's internal policies; (2) common law fraud; (3) breach of

fiduciary duty; (4) negligence and gross negligence; (5) unjust enrichment; and (6) violation of the Kansas Securities Act.

Respondent denied the allegations set forth in the Statement of Claim. Respondent stated that Claimants acknowledged that the investments at issue were suitable by signing subscription agreements, which required each Claimant to represent, warrant, acknowledge and agree that they meet specific income and net worth criteria. In addition, according to Respondent, Claimants were provided with a prospectus and disclaimer information on each investment. Furthermore, Respondent contended that it did not mislead Claimants in any way and had kept Claimants fully informed, and that Claimants had never complained until filing this case about any lack of satisfaction with their investments or with the information they were receiving from their brokers. Respondent argued that Claimants desired high current income, which was what they received, and Claimants were active and informed investors who understood market risk and were alone responsible for any losses incurred. However, Respondent stated that Claimants' investments had and continue, with one exception, to make distributions, and that, therefore, Claimants' losses were not what they claim them to be. Respondent reported returns to Claimants' investments as follows:

Glenda J. Belz		
Investment	Amount Invested	Amount Received
Datronic 19	\$20,000.00	\$12,899.53
Capital Preferred Yield Fund	\$10,000.00	\$6,404.37
Preferred Income Fund III	\$10,000.00	\$1,416.00
TOTAL	\$40,000.00	\$20,719.90

Donald E. Helms		
Investment	Amount Invested	Amount Received
Leastec V	\$10,000.00	\$7,227.98
Datronic 18	\$10,000.00	\$6,581.02
Datronic 19	\$2,500.00	\$1,834.08
TOTAL	\$22,500	\$15,643.08

Robert L. Nelson		
Investment	Amount Invested	Amount Received
Leastec V	\$12,500.00	\$8,850.00
CSA Income Fund III	\$14,500.00	\$8,482.50
Datronic 17	\$10,000.00	\$8,188.20
Datronic 18	\$15,000.00	\$9,768.88
Datronic 19	\$9,000.00	\$6,663.99
TOTAL	\$61,000.00	\$41,954.10

Pauline Esslinger and Waymer Esslinger		
Investment	Amount Invested	Amount Received
Datronic 18	\$45,000.00	\$27,544.78
Textainer Equip. Inc. Fund	\$20,000.00	\$10,741.79
TOTAL	\$65,000.00	\$38,286.57

Vivian Johnson and Robert Johnson		
Investment	Amount Invested	Amount Received
Datronic 18	\$37,000.00	\$22,297.93
TOTAL	\$37,000.00	\$22,297.93

Respondent made the following affirmative defenses: (1) the Statement of Claim failed to state a claim upon which relief could be granted; (2) Claimants were barred from recovery under the doctrine of waiver; (3) Claimants were barred from recovery under the doctrine of estoppel; (4) Claimants suffered no damages as a result of any alleged wrongful action or inaction on the part of Respondent; (5) Claimants' claims were barred or reduced due to their own negligence; (6) Claimants' losses, if any, were caused or contributed to by the acts of parties over whom Respondent did not have control and for whom Respondent was not responsible; and (7) Claimants' claims were barred in whole or in part by the applicable statute of limitations.

RELIEF REQUESTED

Claimants Glenda J. Belz, Donald E. Helms, Robert L. Nelson, Pauline Esslinger and Waymer Esslinger, Vivian Johnson and Robert Johnson, and Doris B. Burton requested an award in an unspecified amount for: compensatory damages; benefit of bargain damages; pre-judgment interest from the date of purchase of the investments; attorneys' fees; costs; and punitive damages.

Respondent Dickinson & Co. requested that the claims asserted against it be denied and that it be awarded its costs and attorney fees incurred in this arbitration.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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. Respondent Dickinson & Co. is liable for and shall pay claimant Glenda J. Belz compensatory damages in the amount of \$13,610.00.
2. Respondent Dickinson & Co. is liable for and shall pay claimant Donald E. Helms compensatory damages in the amount of \$420.00.
3. Respondent Dickinson & Co. is liable for and shall pay claimant Robert L. Nelson compensatory damages in the amount of \$1,900.00.
4. Respondent Dickinson & Co. is liable for and shall pay claimants Vivian Johnson and Robert Johnson compensatory damages in the amount of \$12,000.00.
5. Respondent Dickinson & Co. is liable for and shall pay claimant Doris B. Burton compensatory damages in the amount of \$41,195.48.
6. The parties shall bear their own costs including attorney fees except for forum fees which are addressed below.

7. All other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were eleven (11) hearing sessions x \$750 = \$8,250 in forum fees. Pursuant to §10332(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 pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$750 and shall retain as forum fees the hearing session deposit in the amount of \$200 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimants Glenda J. Belz, Donald E. Helms, Robert L. Nelson, Pauline Esslinger and Waymer Esslinger, Vivian Johnson and Robert Johnson, and Doris B. Burton ("Claimants").

Pursuant to §10333 of the Code, respondent Dickinson & Co. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge in the amount of \$350.

Respondent Dickinson & Co. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$7,500 in additional forum fees.

Respondent Dickinson & Co. is liable for and shall pay Claimants the amount of \$750 as reimbursement for the hearing session deposit.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Signed:

Leah M. Balk, Esquire

Leah M. Balk, Esquire
Public Arbitrator, Presiding Chair

Zel S. Rice, II

Zel S. Rice, II
Public Arbitrator

Ramona V. Larson

Ramona V. Larson
Industry Arbitrator

Dated:

March 5, 1997

March 10, 1997

March 6, 1997

Date served by the NASD Regulation, Inc. Office of Dispute Resolution:

March 11, 1997