

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Arthur D. and Julie E. Stockdale

vs.

Case No.
95-04874

Name of Respondents

Dickinson & Co.
James Brian McVey

REPRESENTATION

For Claimant, Arthur and Julie Stockdale ("Claimants"), appeared Brian N. Smiley, Esq. of Page & Bacek located in Atlanta, Georgia. and Seth Lipner, Esq. of Deutsch & Lipner of Garden City, New York.

For Respondents Dickinson & Co ("Dickinson") and James Brian McVey ("McVey") appeared Barbara Bennett, Esq. of Dickinson & Co., located in Des Moines, Iowa.

CASE INFORMATION

Statement of Claim filed: October 13, 1995.

Claimant's Submission Agreement signed on: September 28, 1995.

Statement of Answer filed by Respondent, Dickinson & Co. was filed on: December 11, 1995.

Respondent, Dickinson & Co.'s Submission Agreement was signed on: December 11, 1995.

Statement of Answer filed by Respondent, James Brian McVey was filed on: December 11, 1995.

Respondent, James Brian McVey's Submission Agreement was signed on: December 11, 1995.

HEARING INFORMATION

Hearing Dates/Sessions: August 19, 1996 - 2 Sessions

Hearing Location: NASD offices located at 260 Franklin Street, Boston, MA.

CASE SUMMARY

Claimants, a 42 year old manager for IBM and his homemaker wife, asserted claims against Dickenson & Co., a broker dealer and James Brian McVey, a registered representative associated with Dickenson, arising out of McVey's conduct in the management of their account at Dickenson from its opening in September 1993 through its closing in July, 1994. Claimants, whose net worth exceeded \$500,000,

including investment property, an automobile sales business, and conservative securities, began doing business with McVey and Dickenson on the recommendation of Arthur Stockdale's fellow IBM workers. Mr. Stockdale testified that he was investing seeking a "safe" short term return on funds he intended to use to purchase a new residence after his transfer to an IB facility in Vermont. Although Mr. Stockdale testified that he had planned to invest approximately \$45,000.00 for a period that was to end when he and his wife closed on the purchase of a new home in February, 1994, Claimants eventually invested approximately \$60,000.00 in cash purchases and \$20,000.00 in margin purchases of securities through Dickenson through April, 1994. Claimant retired all margin debt within sixty days and retains all of the securities whose purchase was placed into issue.

While Claimants purchased six securities through Dickenson and McVey during the period in which they were Dickenson customers, transactions in the securities of only two issuers were the subject of evidence. One of these securities was units (common stock plus warrants) of Hammers Plastic Recycling Corp., which Claimants purchased in an initial public offering underwritten by Dickenson in September, 1993. Claimant alleged that McVey and Dickenson failed to disclose material financial information concerning Hammer, particularly the facts that its auditors had issued an opinion setting forth doubt Hammer could continue to do business as a "going concern" and the extent to which proceeds of the offering would be used to retire outstanding indebtedness. The second set of claims arises out of claimants' purchase in September, 1993, October, 1993 and April, 1994 of common stock of Conversion Industries, Inc., a company engaged in the business of investing in "emerging growth" companies, whose stock would be distributed to Conversion shareholders as "dividends" when those companies successfully completed initial public offerings. There was evidence that McVey represented to Claimant Arthur Stockdale that an investment in Hammer would grow approximately 10% within 60-90 days, and Conversion was a stock likely to provide a substantial return based upon the distribution of other new companies. McVey testified that he had disclosed the speculative nature of the investments Claimants had made a number of times. There is a dispute between the parties as to whether McVey and Dickinson disclosed all known adverse information concerning both Hammer and Conversion to Claimants prior to the purchases in issue, particularly with respect to Hammer's supposedly questionable financial condition, and Conversion's association with both Dickenson and individuals who, like McVey, were formerly associated with J.W. Gant & Co., some of whom had been disciplined by the Association. Claimants asserted the non-disclosure of this material information was fraudulent in violation of both Federal and Vermont law.

RELIEF REQUESTED

Claimants requested damages in the approximate amount of \$81,000.00 reflecting the purchase price of their investments in Hammer and Conversion, together with interest and attorneys fees pursuant to Vermont law.

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:

All claims against both Respondents are dismissed in their entirety. Claimants have failed to meet their burden of proving, in the case of Hammer, that Respondents failed to disclose Hammer's potential inability to continue business as a going concern and the use of proceeds of its initial public offering in which claimants participated to repay loans, where all of these facts were set forth in the final prospectus mailed to Claimants at the time the initial public offering was closed in late September, 1993. In view of such disclosure, whether or not McVey disclosed these facts to Claimants, or could have made better

disclosure of these facts in his telephone conversations with Arthur Stockdale in September, 1993 is not sufficient to establish a claim for fraud in violation of Vermont law.

With respect to Conversion Technology, while Claimants presented evidence that personnel then or formerly associated with J.W. Gant and/or Dickenson and sanctioned by the NASD continued to be associated with Conversion, that the accuracy of Conversion's financial statements had been questioned as early as November, 1993, that Conversion was ultimately delisted by the American Stock Exchange, Inc., and its auditors and officers named as defendants in class actions, Claimants did not meet their burden of proving that McVey and/or Dickenson failed to disclose any information known or reasonably known to them concerning Conversion's accounting practices or management which was not disclosed in documents in the hands Claimants, including adverse publicity concerning Conversion dating to November, 1993. In view of the apparent disclosure in general terms (again if not in perfect terms) of the speculative nature of the investments that Claimants were making, it cannot be said that the Claimants have met their burden of proving fraud on the part of either Dickenson or McVey.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$150.00 non-refundable filing fee and have assessed the following Forum Fees:

2 Sessions x 500 = \$1,000.00

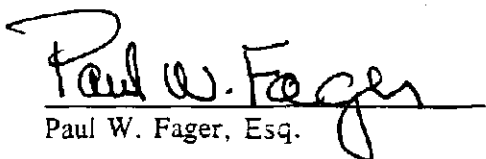
The arbitrators have determined that Claimants shall be liable for one-half the total cost of arbitration and Respondents shall jointly and severally be liable for one-half the cost of arbitration.

Therefore, Claimant are liable to and shall pay to the NASD the sum of \$500.00 minus the hearing session deposit of \$500.00 previously paid by Claimants, net \$0.00 due.

Respondents Dickinson & Co. and James Brian McVey are jointly and severally liable to and shall pay to the NASD the sum of \$500.00.

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

ARBITRATORS SIGNATURE'S


Paul W. Fager, Esq.

Public

Edward R. Wiest, Esq.

Public

Timothy F. Shanahan, CFP

Industry

Date of Decision: October 24, 1996

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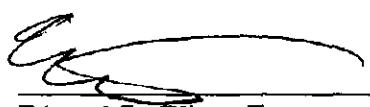
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Ch. 101 P-524

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