

**NASDR AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the matter between

Lon E. Smallridge,

Claimant,

v.

Case No. 95-05017

R.G. Dickinson & Company  
and Brian L. Heithoff,© National Association of  
Securities Dealers, Inc.

Respondents.

All Rights Reserved

**REPRESENTATION OF PARTIES**

Claimant, Lon E. Smallridge was represented by Robert B. Scism, Esquire of Shinkle, Bauer, Scism, Hudson & Lynch, located in Des Moines, Iowa.

Respondents, R.G. Dickinson & Co. and Brian L. Heithoff were represented by Barbara Bennett, Esquire of Dickinson & Co., located in Des Moines, Iowa.

**CASE INFORMATION**

Claimant, Lon E. Smallridge's Statement of Claim was filed on or about October 23, 1995

Claimant, Lon E. Smallridge's Submission Agreement was signed on September 29, 1995.

Respondents, R.G. Dickinson & Co. and Brian L. Heithoffs Statement of Answer was filed on or about December 21, 1995.

Respondent, R.G. Dickinson & Co.'s Submission Agreement was signed on December 15, 1995 by Barbara Bennett, Vice President - Legal.

Respondent, Brian L. Heithoff s Submission Agreement was signed on December 15, 1995.

**HEARING TION**

The hearing was held on May 21, 1996 in Omaha, Nebraska for two (2) sessions.

9608146

### **CASE SUMMARY**

Claimant, Lon E. Smallridge ("Claimant") alleged that Respondents, R.G. Dickinson & Co. and Brian L. Heithoff ("Respondents") made recommendations upon which he relied and suffered substantial damages. Claimant asserted that he was an inexperienced investor who had never bought or sold a security until Respondents contacted him. Claimant alleged that Respondents: disregarded his investment objective to provide for his retirement by recommending stocks for purchase that were highly speculative; failed to properly inform him about the nature of a margin account, but persuaded him to trade on margin anyway; and acted in self-interest by only recommending and executing transactions of securities for which Respondent either had an underlying relationship with the issuer or for which Respondent was the underwriter or both. Claimant made the following legal claims: (1) suitability; (2) negligence; (3) respondeat and control person liability; and (4) breach of fiduciary duty.

Respondents denied the claims made in the Statement of Claim in their entirety. Respondents specifically stated that Claimant informed them that his investment objective was growth and that he could tolerate risk. Respondents further asserted that: the securities Claimant purchased were appropriate in light of Claimant's investment goal of growth; Claimant was regularly updated about his account positions, current prices, and related news; Claimant chose to open a margin account after he was provided with disclosure documents which clearly set forth the terms and obligations required of Claimant; Claimant was fully informed of any margin requirements and was notified when additional deposits were necessary; Claimant received written confirmations for each of his account transactions and he received monthly account statements; Claimant never complained about the service he had received, but he did express disappointment over the performance of the stocks in his account; Claimant chose to continue to do business with Respondents; Claimant controlled his account and was aware of the volatility of the securities he purchased; and Claimant was advised that he could reduce his risk by not trading on margin and diversifying his account with less volatile investments. In addition, Respondents made the following affirmative defenses: (1) the Statement of Claim failed to state a claim upon which relief may be granted; (2) the Statement of Claim was barred by the doctrine of waiver; (3) the Statement of Claim was barred by the doctrine of estoppel; (4) Claimant has suffered no damage as a result of any alleged wrongful action or inaction on the part of Respondents; (5) Claimant's claim was barred or reduced by his own negligence and failure to exercise diligence with respect to his investments; (6) Claimant's losses, if any, were caused or contributed to by the acts of parties over whom Respondent did not have control and for whom Respondents are not responsible; and (7) Claimant's claim was barred in whole or in part, by the applicable statute of limitations.

### **RELIEF REQUESTED**

Claimant, Lon E. Smallridge requested an award in the amount of \$29,111.06 in compensatory damages, plus interest and attorney's fees pursuant to Iowa Code Section 502.502.

9628146

Respondents, R.G. Dickinson & Co. and Brian L. Heithoff requested that the Statement of Claim be dismissed in its entirety and that costs be assessed against the Claimant.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASDR.

**AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing as well as the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) That Respondent, R.G. Dickinson & Co. is liable for and shall pay Claimant, Lon E. Smallridge the sum of \$14,797.00 in compensatory damages;
- (2) That Respondent, R.G. Dickinson & Co. is liable for and shall pay Claimant, Lon E. Smallridge the amount of \$2,500.00 in attorneys fees pursuant to Iowa Code Section 602.502, the legal authority provided by the Claimant; and
- (3) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded are, and each of them, hereby denied with prejudice.

**FORUM FEES**

Forum fees are calculated at the rate of \$400.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$400.00 = \$800.00 in forum fees Pursuant to Section 43(b) of the NASDR 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 Section 43(c) of the Code, the NASDR shall retain the non-refundable filing fee in the amount of \$100.00 and shall retain as forum fees the hearing session deposit in the amount of \$400.00 previously deposited with the NASDR by Claimant, Lon E. Smallridge.

Pursuant to Section 45 of the Code, Respondent R.G. Dickinson & Co. is liable for and shall pay to NASDR the member surcharge fee in the amount of \$200. Respondent, R.G. Dickinson & Co. is hereby liable for and shall pay to the NASDR the sum of \$400.00 in additional forum fees.

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

9608146

Signed:

Dated:

Gordon W. Hall Esquire

August 13, 1996

Gordon W. Hall, Esquire  
Public Arbitrator, Presiding Chair

David A. Nixon, Esquire

August 12, 1996

David A. Nixon, Esquire  
Public Arbitrator

Steven R. Christensen

August 16, 1996

Steven R. Christensen

Industry Arbitrator

Date served by the NASDR: August 21, 1996

Date served by the NASDR