

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Elmer E. Smith, and
Marita E. Smith,
Claimants,

v.

No. 96-00934

Scott A. Lehner, and
Dickenson & Co.,
Respondents.

REPRESENTATION OF PARTIES

Claimants Elmer E. Smith, and Marita E. Smith were represented by Kurt A. Harper, Esq., of Sherwood & Harper, Wichita, Kansas.

Respondents Scott A. Lehner ("Lehner"), and Dickenson & Co. ("Dickenson") (collectively referred to as "Respondents") were represented by Barbara Bennett, Esq., of Dickenson & Co., Des Moines, Iowa.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about February 28, 1996. Claimants' Submission Agreement was signed on February 28, 1996.

Respondents' Statement of Answer was filed on or about April 24, 1996. Respondents' Submission Agreements were signed on April 24, 1996.

HEARING INFORMATION

The hearing was held on: December 17, 1996 for two (2) sessions.

The hearing was held in Kansas City, Missouri.

CASE SUMMARY

Claimants alleged that: The acts and omissions of Respondents constitute a violation of the Kansas Securities Act; by their acts and omissions Respondents committed common law fraud; Respondents made material misrepresentations to them about the securities at issue in the Statement of Claim; Respondents failed to deliver a prospectus; Respondents made unsuitable investments for their

accounts; and it was not until after January of 1996 that Claimants were advised directly by Datronic representatives that the distributions previously received constituted distributions of principal rather than interest. The allegations arose out of transactions in Datronics Equipment Fund XVII, L.P., and Datronics Equipment Fund XVIII, L.P.

Unless otherwise admitted therein, Respondents denied each and every allegation set forth in the Statement of Claim. Respondents also asserted the following affirmative defenses: The Statement of Claim fails to state a claim upon which relief may be granted; Claimants' action or inaction bars them from recovery by reason of the doctrines of waiver, and estoppel; Claimants have suffered no damages as a result of any alleged action or inaction on the part of Respondents; Claimants' claims are barred by reason of their own negligence and failure to exercise such diligence with respect to its investments as would be expected of a reasonable person under the same circumstances; Claimants' losses, if any, were caused or contributed to by the acts of parties over whom Respondents did not have control and for whom Respondents are not responsible; and Claimants' claims are barred in whole or in part by the applicable statute of limitations.

RELIEF REQUESTED

Claimant requested an award of the following: \$195,000 in actual damages; for interest at the rate of 15 percent per annum; for punitive damages in an amount to be determined by the panel; for their attorneys fees pursuant to the Kansas Securities Act; and for such other and further relief as the court deems just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

(1) Respondents Scott A. Lehner and Dickenson & Co. are jointly and severally liable for, and shall pay to the Claimants the sum of \$41,312 as satisfaction for their claims of compensatory

damages and interest, and \$750 as reimbursement for the hearing session deposit paid to file this arbitration.

(2) 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 \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$750 = \$1,500 in forum fees. Pursuant to §10332(b) 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 NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350 previously paid by Respondent.

Additional forum fees in the amount of \$750 are assessed by the arbitrators jointly and severally against the Respondents.

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

Dated:

Richard E. McEachen
Richard E. McEachen
Public Arbitrator, Presiding Chair

/s/

March 14, 1997

Barton P. Cohen
Barton P. Cohen
Public Arbitrator

/s/

March 14, 1997

Robert A. Goodwin
Robert A. Goodwin
Industry Arbitrator

/s/

March 11, 1997