

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Edward John Mitiu,

Claimant,

and

No. 96-03836

Dickinson & Co.; John Colias; and Jeff Heider,
Respondents.

REPRESENTATION OF PARTIES

For Claimant: Edward John Mitiu ("Mitiu") appeared pro se.

For Respondents: Dickinson & Co. ("Dickinson"), John Colias ("Colias"), and Jeff Heider ("Heider") (hereinafter collectively referred to as "Respondents") were represented by Barbara Bennett, Esq. of Dickinson & Co., located in Des Moines, Iowa.

CASE INFORMATION

Mitiu's Statement of Claim was filed on: August 29, 1996.

Mitiu's Submission Agreement was signed on: August 26, 1996.

Respondents' Statement of Answer was filed on: November 12, 1996.

Dickinson's Submission Agreement was signed by Barbara Bennett, Vice President - Legal, Dickinson & Co., on: November 12, 1996.

Colias' Submission Agreement was signed on: November 12, 1996.

Heider's Submission Agreement was signed on: November 12, 1996.

HEARING INFORMATION

Pre-hearing conferences: None held

The hearing was held on: June 23, 1997 for one (1) session.

The hearing was held in: Chicago, Illinois.

CASE SUMMARY

Claimant brought this action to recover losses allegedly resulting from the misrepresentations, unsuitable investments, and mishandling of his account by Colias, a broker, and Heider, an office manager, both of Dickinson's Naperville branch office. Claimant alleged that Respondents are liable for losses in his pension and individual retirement account ("IRA"), as well as his personal losses, asserting that Colias made misrepresentations about IBM stock that resulted in a loss of \$9,000. Claimant further alleged that Respondents persuaded him to place North American Security Life Insurance Company's Venture Annuity into his pension and IRA through misrepresentations of the risk and return on the investment. Claimant

also alleged Respondents traded mutuals and stocks in his IRA contrary to his directions, made misrepresentations of limited partnerships, churning of stocks, trickery, and deceit of intention.

Respondents denied the material allegations of the Statement of Claim and argued that Claimant did not provide specific or sufficient details to which they could respond in any meaningful or concise way. Respondents made the following affirmative defenses: (1) the Statement of Claim fails to state a claim upon which relief may be granted; (2) Claimant's action or inaction bars him from recovery under the Statement of Claim by reason of the doctrine of waiver; (3) Claimant's action or inaction bars him from recovery under the Statement of Claim by reason of the doctrine of estoppel; (4) Claimant has suffered no damages as a result of any alleged wrongful action or inaction on the part of Respondents; (5) Claimant's claim is barred or reduced by reason of his own negligence and failure to exercise such diligence with respect to his investments as would be expected of a reasonable person under the same circumstances; (6) Claimant's 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; (7) Claimant's claim is barred in whole or in part, by the applicable statute of limitations; (8) Claimant has failed to include all profits and losses in his account, and, therefore, this claim cannot fully adjudicate the handling of the account as he only wishes to complain as to some securities on which he failed to earn a profit; (9) Claimant failed to exercise reasonable care and diligence to minimize and mitigate any alleged damages and is therefore precluded from recovery herein; (10) Claimant's alleged losses were not proximately caused by any alleged misconduct of any Respondent and Claimant is therefore precluded from recovery herein; and (11) Claimant's claims are barred in whole or in part by the doctrine of ratification.

RELIEF REQUESTED

Claimant requested an award for damages in the amount of \$100,000.

Respondents requested that the claims asserted against it be dismissed in their entirety and that costs be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The undersigned arbitrators hereby note that at the hearing in this matter Claimant failed to sustain his burden of proof by sufficient probative evidence of any claimed violation or for any claimed damages.

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 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. The Statement of Claim is dismissed with prejudice.
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.
3. The undersigned arbitrators hereby order that any and all records of this claim from the Central Registration Depository ("CRD") of the National Association of Securities Dealers, Inc., with respect to both Respondent John Colias and Respondent Jeff Heider, be expunged; and
4. Any relief not specifically awarded is hereby denied with prejudice.

FORUM FEES

Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed: One (1) hearing session x \$500.00 per session = \$500.00.

Pursuant to § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$150.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$500.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Edward John Mitiu.

Pursuant to § 10333 of the Code, Dickinson & Co. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge in the amount of \$300.00.

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

Concurring Arbitrators' Signatures

/s/ Robert S. Sugarman, Esq.
Robert S. Sugarman, Esq.
Chairperson
Public Arbitrator

July 22, 1997
Date

/s/ Richard A. Crane, Esq.
Richard A. Crane, Esq.
Public Arbitrator

July 22, 1997
Date

/s/ Kathleen W. Arpaia
Kathleen W. Arpaia
Industry Arbitrator

July 24, 1997
Date

For NASD use only: Date Award was served on the parties: _____