

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

**Dakota Construction, Inc. v. VTR Capital, Inc., a/k/a Fairchild Financial Group, Inc., Jason Cope, Jeffrey Haberstroh, Wallace Conley and E.M. Holdings**

Case Number: 99-704

Hearing Site: Omaha, Nebraska

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**REPRESENTATION OF PARTIES**

Claimant, Dakota Construction, Inc. ("Dakota"), hereinafter referred to as "Claimant": Gail E. Boliver, Esq., Marshalltown, Iowa.

Respondent, VTR Capital Inc. a/k/a Fairchild Financial Group, Inc. ("VTR"), hereinafter referred to as "Respondent": did not appear at hearing.

Respondent, Jason Cope ("Cope"), hereinafter referred to as "Respondent Cope": did not appear. Mr. Cope was represented by Marc B. Dorfman of Freedman, Levy, Kroll & Simonds, Washington, D.C., from on or about January 1, 2000, until on or about July 21, 2000.

Respondent, Jeffrey Haberstroh ("Haberstroh"), hereinafter referred to as "Respondent Haberstroh": pro se.

Respondents VTR, Haberstroh, and Cope were represented by Ruthann Niosi, Esq., New York, New York, until on or about: December, 1999

Respondent, Wallace Conley ("Conley"), hereinafter referred to as "Respondent Conley": did not appear.

Respondent, E.M. Holdings ("Holdings"), hereinafter referred to as "Respondent Holdings": did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: February 16, 2001

Motion to Amend filed by Claimant on or about: January 25, 2000

Respondent Cope's Response to Motion to Amend filed on or about February 8, 2000

Amended Statement Claim filed on or about: March 10, 2000

Claimant signed the Uniform Submission Agreement: December 15, 1998 by A. Richard Heupel, Executive Vice President and Dennis Gentry, President.

Statement of Answer filed by Respondents, VTR, Cope, and Haberstroh, on or about: May 4, 1999

Respondent, Jason Cope, signed the Uniform Submission Agreement: April 5, 1999

### **CASE SUMMARY**

Claimant asserted the following causes of action: Suitability; Breach of fiduciary duty; Negligent supervision; Misrepresentation; Violations of federal securities laws; Violations of Nebraska Securities Act 8-1101; Negligence; and Breach of Contract. The causes of action relate to Respondents' alleged failure to provide Claimant with a properly balanced portfolio. Claimant further asserted that Respondents sold Claimant equity products in which they made a market, including Compare Generiks and Kid Stuff.

Unless specifically admitted in their Answer, Respondents VTR, Haberstroh, and Cope, denied the allegations made in the Statement of Claim and asserted defenses including the following: Claimant has failed to state a claim upon which relief may be granted; any losses suffered by Claimant are the result of market losses and they are not entitled to recovery from Respondent; Claimant failed to use due diligence with respect to the transactions and acts complained of and, accordingly, is barred from asserting or recovering for any such transactions or acts.

### **RELIEF REQUESTED**

Claimant requested damages of \$65,000.00, plus costs, forum fees attorney fees, interest (at the legal rate for the legal date), punitive damages, as well as any other damages the Panel deems just and equitable.

Respondents VTR, Haberstroh, and Cope, requested dismissal, costs, and any other just and equitable relief that the Panel deems appropriate.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Panel granted Claimant's Motion to Amend (Claim) on or about March 3, 2000

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondents, Jason Cope and VTR Capital Inc. a/k/a Fairchild Financial Group, Inc. have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent VTR Capital Inc. a/k/a Fairchild Financial Group, Inc., did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondents, E.M. Holdings and Wallace G. Conley have not been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code"). The Panel did not adjudicate any claims against Respondents Conley and Holdings.

NASD advised claimant on March 14, 2000, that CRD had no record of E.M. Holdings and requested that Claimant supply an address in order to serve the Amended Claim. Claimant did not supply NASD with a supplemental address.

NASD advised Claimant on April 5, 2000, that NASD was unable to perfect service on Wallace G. Conley at his address maintained by CRD and requested that Claimant supply an alternative address. Claimant supplied a supplemental address after the conclusion of the hearings and the close of the record.

The Panel denied Claimant's request at hearing to keep the record open in order for Claimant to perfect service upon Respondents Conley and Holdings.

### **AWARD**

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

- 1.) Respondents VTR Capital, Inc., a/k/a Fairchild Financial Group, Inc., and Jason Cope are jointly and severally liable for and shall pay to Claimant, Dakota Construction, Inc., the sum of \$30,209.00 in compensatory damages;
- 2.) Respondents VTR Capital, Inc., a/k/a Fairchild Financial Group, Inc., and Jason Cope are jointly and severally liable for and shall pay to Claimant, Dakota Construction, Inc., the sum of \$500.00 as reimbursement for forum fees;
- 3.) Respondent, Jeffrey Haberstroh, is dismissed with prejudice.
- 4.) Respondents, E.M. Holdings and Wallace Conley are dismissed without prejudice.
- 5.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Jeffrey Haberstroh's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Haberstroh (CRD #2830856) must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 6.) That other than Forum Fees, which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 7.) That any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

## **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

NASD Dispute Resolution, Inc., will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 150.00

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,000.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$1,500.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

February 24-25, 2000 adjournment by Claimant and Respondent Cope = \$ 500.00

### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$300.00 = \$ 600.00

Pre-hearing conferences: September 21, 1999 1 session  
January 11, 2000 1 session

Two (2) Pre-hearing sessions with Panel x \$500.00 = \$1,000.00

Pre-hearing conferences: August 30, 1999 1 session  
November 9, 2000 1 session

One (1) Hearing session x \$500.00 = \$ 500.00

Hearing Date: March 5, 2001 1 session

Total Forum Fees = \$2,100.00

The Panel has assessed \$500.00 of the forum fees to Dakota Construction, Inc.

The Panel has assessed \$1,600.00 of the forum fees jointly and severally to Fairchild Financial Group, Inc., a/k/a VTR Capital, Inc., and Jason Cope.

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Arbitration # 98-704  
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Fee Summary

Claimant, Dakota Construction, Inc., is solely liable for:

Initial Filing Fee	= \$ 150.00
Adjournment Fee	= \$ 250.00
Forum Fees	= \$ 500.00
Total Fees	= \$ 900.00
Less payments	= \$ 650.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 250.00

Respondent, Fairchild Financial Group, Inc., a/k/a VTR Capital, Inc., is solely liable for:

Member Fees	= \$ 3,100.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,100.00

Respondent Jason Cope, is solely liable for:

Adjournment Fee	= \$ 250.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 250.00

Respondents, Fairchild Financial Group, Inc., a/k/a VTR Capital, Inc., and Jason Cope, are jointly and severally liable for:

Forum Fees	= \$ 1,600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,600.00

All balances are due to NASD Dispute Resolution, Inc.


Concurring Arbitrators' Signatures

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Wayne S. Rasmussen, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Thomas J. Tarsney, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Mary K. Fay  
Industry Arbitrator

4-4-01  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.  
 Arbitration # 99-704  
 Award Page 5 of 5

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Signature Date

  
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**Concurring Arbitrators' Signatures**

  
Wayne S. Rasmussen, Esq.  
Public Arbitrator, Presiding Chair

4/5/2001  
Signature Date

\_\_\_\_\_  
Thomas J. Tarsney, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Mary K. Fay  
Industry Arbitrator

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