

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Richard D. Fischer

Case No. 99-02280

Name of Respondents

Americorp Securities, Inc.
Dirks & Company, Inc.

Hearing Location: Washington, D.C.

REPRESENTATION OF PARTIES

Claimant, Richard D. Fischer ("Fischer") was represented by William S. Burroughs, Jr. Esq., Attorney at Law, Arlington, VA.

Respondent, Dirks & Company, Inc. ("Dirks") was represented by Robert L. Goss, Dirks & Company, Inc., New York, NY.

Respondent, Americorp Securities, Inc. ("Americorp") did not appear at the hearing and was not represented.

CASE INFORMATION

Statement of Claim filed on: May 15, 1999.

Claimant, Fischer, signed the Uniform Submission Agreement on: May 15, 1999.

Statement of Answer filed by Respondent, Dirks, on: September 21, 1999.

Respondent, Dirks', Uniform Submission Agreement was executed by Robert L. Goss, President, on: September 20, 1999.

CASE SUMMARY

Claimant Fischer is a self-employed dental surgeon; he is a citizen and resident of the Commonwealth of Virginia.

At the time in question, Respondent Americorp is a securities broker-dealer member of NASD with its main offices in New York, NY. At all pertinent times herein, it employed Mr. Pablo Feist ("Feist") as a registered representative.

Respondent Dirks is a securities broker-dealer member of NASD with its main offices in

New York, NY. At all pertinent times herein, it employed Mr. Feist as a registered representative. While there were other named Respondents originally, for various reasons, such as bankruptcy, this Arbitration Hearing concerned only Americorp and Dirks as Respondents.

Accounts in Question. Fischer maintained an individual account at Americorp.

At Dirks, Fischer maintained two (2) accounts, an individual account, as well as his individual retirement account ("IRA").

Causes of Action. For Fischer's causes of action against the Respondents, Claimant asserts various claims, including: securities fraud, including violation of Rule 10b-5; violation of the Commonwealth of Virginia Securities laws; actual and/or constructive common law fraud; negligence; breach of express and/or implied contract; churning; unsuitability; failure to supervise; and, breach of fiduciary duty.

Defenses. In its Statement of Answer, Dirks denied all liability. Dirks asserts the value of Fischer's accounts diminished through no fault of Dirks; that the shares purchased were not excessive nor inappropriate, but in keeping with Fischer's investment objective; that Fischer failed to voice concerns about the handling of the accounts; and, that Fischer was responsible for his own actions.

Americorp failed to answer the Statement of Claim or appear at the hearing.

Damages. Fischer asserts damages against Americorp in the amount of \$3,525, plus interest thereon of \$696, plus reasonable attorneys' fees of \$1,055, for a total of \$5,276.

Fischer asserts damages against Dirks in the amount of \$14,352, plus interest thereon of \$2,291, plus reasonable attorneys' fees of \$4,161, for a total of \$20,804.

ARBITRATION PANEL FINDINGS

This Arbitration involves two (2) Respondents, which both employed Feist as their registered representative, respectively. Among others, Claimant was one of Feist's customers whose accounts "followed" Feist as he changed employing broker-dealers from early 1996 to early 1999. Fischer relied upon Feist's investment advice. At each brokerage, including at both Respondents', due, in part, to a lack of adequate supervision, Feist recommended purchases and/or sales of various unsuitable securities, for the purpose of generating commissions, and without full disclosure of material facts. Fischer purchased and sold accordingly, and incurred losses. Feist was acting within the scope of his respective employment at each of these Respondents. From early 1996 to early 1999, the IRA account lost fifty-five percent (55%) of its value; the non-IRA account lost eighty-four percent (84%) of its value.

Historically, prior to becoming a registered representative, Feist received a discharge in bankruptcy in 1994. In the two (2) years prior to his employment at Americorp, Feist had

been employed as a registered representative at five (5) different securities brokerages (with Americorp being his sixth (6th) employing brokerage). Dirks was Feist's ninth (9th) employing securities-brokerage in approximately four (4) years.

Dirks was aware of Feist's employment history; similarly, Dirks also should have been aware that Fischer's IRA account being transferred in contained a virtually worthless security (\$0) investment (convertible preferred security) in one (1) on Feist's prior employing securities-brokerages, itself. Additionally, the new account applications for these accounts at Dirks were not signed, but do both reflect a non-speculative investment objective. After about nine (9) months of employment, Dirks suggested that Feist leave, permitting him to resign.

Institutionally, despite its Manual provisions, in actuality, Dirks had no established system of monitoring to assure a solicited transaction complied with the rules of suitability. Further, some of Dirks' records of its monthly "compliance" and "review" of Feist were missing; several of such records were incomplete. Americorp and Dirks both failed to adequately and properly supervise Feist, their registered representative, respectively. Such lack of supervision directly and proximately caused Fischer to suffer damages

Upon a review of the record herein in its totality, the Arbitration Panel finds it has jurisdiction over both Respondents, including Respondent Americorp, and that Fischer carried his burden of proof and proved his damages against Americorp. Fischer also carried his burden of proof and proved his damages against Dirks, resulting in a loss of \$4,760 which appeared unsuitable. The loss of \$4,760 was for the transactions actually processed by Dirks which appeared unsuitable. Attorneys' fees are permitted under the laws of the Commonwealth of Virginia and are due and proper to impose and award under the facts and circumstances herein.

RELIEF REQUEST

Claimant requested:

Compensatory Damages	\$162,488
Punitive Damages	amount unspecified
Attorneys Fees	amount unspecified

Respondents denied the allegations in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent Americorp has 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 Respondent present, in accordance with the NASD-DR Code of Arbitration Procedure (the "Code").

The parties present at the hearing agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

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:

As to Respondent Americorp, Fischer is awarded \$4,221 in actual damages. Americorp shall also pay to Fischer reasonable attorneys' fees in the amount of \$1,055. The total award Americorp shall pay to Fischer is \$5,276, with 6% per annum interest to accrue thereon from the date of this Award until paid in full.

As to Respondent Dirks, Fischer is awarded \$4,760 in actual damages. Dirks shall also pay to Fischer reasonable attorneys' fees totaling \$1,390. The amount of attorneys' fees owed includes \$1,190 in fees as well as \$200 in additional attorneys' fees due to Dirks' failure to produce requested discovery until being ordered to do so by the Panel at the Arbitration Hearing. The total award Dirks shall pay to Fischer is \$6,150, with 6% per annum interest to accrue thereon from the date of this Award until paid in full.

The parties shall bear their respective costs and expenses, including attorneys' fees, except as attorneys' fees and Fees are addressed herein.

Any request for relief not specifically addressed herein is denied in its entirety.

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	= \$300
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are Respondent Americorp and Dirks. Americorp became a Terminated Member prior to the commencement of this Action, and thus all Member Fees are waived as against Americorp.

Member Fees for Americorp:

Member surcharge	= waived
Pre-hearing process fee	= waived

Hearing process fee = waived

Member Fees for Dirks:

Member surcharge = \$1,500
Pre-hearing process fee = \$ 600
Hearing process fee = \$2,500

Adjournment Fees

Adjournments requested during these proceedings:

January 17, 2001 through January 19, 2001, adjournment by Fischer = fee waived

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing sessions with Panel x \$1,125 = \$1,125
Pre-hearing conference: May 30, 2000 1 session

Two (2) Hearing sessions x \$1,125 = \$2,250
Hearing Date: April 5, 2001 2 sessions

Total Forum Fees = \$3,375

The Panel has assessed \$3,375 of the forum fees to be paid jointly and severally by Respondents Americorp and Dirks.

Fee Summary

Claimant, Fischer, is assessed the following Fees:

Initial Filing Fee = \$ 300
Total Fees = \$ 300
Less payments = \$1,425
Refund owed to Claimant = \$1,125

Respondent, Dirks, is assessed the following Fees:

Member Fees = \$4,600
Total Fees = \$4,600
Less payments = \$4,600
Balance Due NASD Dispute Resolution, Inc. = \$ 00

Respondent, Americorp, is assessed the following Fees:

Member Fees = waived
Total Fees = waived

Respondents, Dirks and Americorp, are jointly and severally assessed the following Fees:

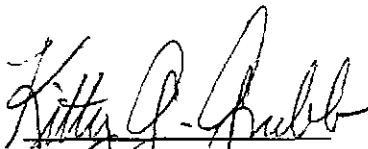
<u>Forum Fees</u>	<u>= \$3,375</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,375

All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

<i>Kitty Grubb, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Seymour Herman, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Bryon Fusini</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signature(s)



Kitty Grubb, Esq.
Public Arbitrator, Presiding Chairperson

June 1, 2001
Signature Date

Seymour Herman, Esq.
Public Arbitrator

Signature Date

Bryon Fusini
Non Public Arbitrator

Signature Date

June 4, 2001
Date of Service (For NASD-DR office use only)

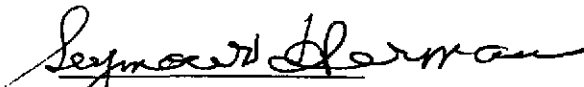
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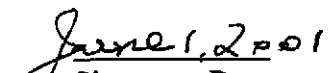
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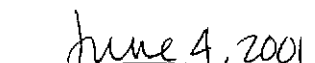
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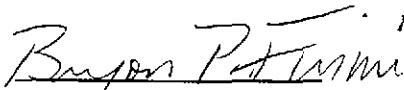
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Signature Date


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Non Public Arbitrator

1 June 2001
Signature Date

June 4, 2001
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