

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

THOMSON MCKINNON SECURITIES, INC.

Claimant

and

GARY E. SMITH, as Trustee for the
GARY E. SMITH, II Trust and GARY E.
SMITH, II

Respondent

CASE NO. 88-00325

ECO

CASE SUMMARY

In a Statement of Claim filed with the NASD on February 1, 1988, Claimant Thomson McKinnon Securities, Inc. alleged that Respondents failed to pay the amount due on a debit balance in Respondents' option account pursuant to liquidation of the account executed according to the terms of an option agreement executed by Respondent Gary E. Smith as Trustee of the Gary E. Smith II Trust.

In a Statement of Answer filed with the NASD, Respondents Gary E. Smith, as Trustee of the Gary E. Smith II Trust, and Gary E. Smith II denied the allegations of the Statement of Claim and affirmatively stated that the contract was terminated by all parties prior to the time the cause of action arose. In addition, Respondents stated a counterclaim alleging that the Claimant failed to execute a sell order in a timely matter resulting in a loss in the account.

RELIEF REQUESTED

Claimant requested an award against Respondents in the amount of \$12,967.79 together with interest thereon and all costs and disbursements of this action including reasonable attorneys' fees.

Respondents requested that Claimant take nothing on its Statement of Claim and that an award issue for \$18,000 on the counterclaim, together with interest, all costs and disbursements and reasonable attorneys' fees.

AWARD

On July 23, 1990, in Houston, Texas during a hearing lasting 1 session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on December 27, 1987 by Morgan W. Bentley on behalf of Claimant, Thomson McKinnon Securities, Inc. and on September 17, 1988 by Respondent Gary E. Smith. Respondent Gary E. Smith, II did not file a submission to arbitration, but was present at the hearing to represent the respondents. Upon motion made telephonically by counsel for claimant, the arbitrators allowed the claim of Thomson McKinnon Securities, Inc. to be presented on papers submitted and appear telephonically. Upon motion duly made to the arbitrators, the Statement of Claim against Respondent Gary E. Smith II was dismissed.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Gary E. Smith, as trustee for the Gary E. Smith, II trust shall be and hereby is liable for and shall pay to Claimant Thomson McKinnon Securities, Inc. the sum of \$12,967.79 plus interest at 6% per annum from December 9, 1987 to July 23, 1990.

2. Respondents' Counterclaim is dismissed and denied in its entirety;

3. The parties shall each bear their own costs including attorneys' fees;

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$400.00 filing fee previously deposited with the NASD by the Claimant Thomson McKinnon Securities, Inc.

By the Panel

Dated: _____

/S/

Raymond L. Britton, Sr. Esq.
Presiding Chair

Dated: 8/13/90

/S/

Patrick Lanier, Esq.

Dated: _____

/S/

Thomas J. Lisenby

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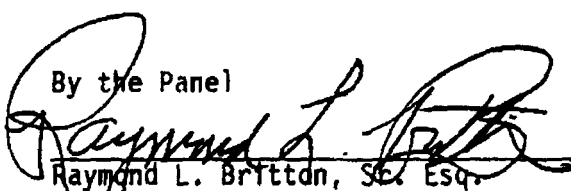
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Dated: 8/6/90

/S/

By the Panel


Raymond L. Britton, Sr. Esq.
Presiding Chair

Dated: _____

/S/

Patrick Lanier, Esq.

Dated: _____

/S/

Thomas J. Lisenby

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By the Panel

Dated: _____ /S/

Raymond L. Britton, Sr. Esq.
Presiding Chair

Dated: _____ /S/

Patrick Lanier, Esq.

Dated: August 6, 1990 /S/

Thomas J. Eisenby
Thomas J. Eisenby