

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

-----  
IN THE MATTER OF THE ARBITRATION BETWEEN :  
: Jon, Sandra, Gregory & Cathy McClellan :  
Robert & Barbara Hunter :  
: Claimants : Case #89-00327  
: AWARD  
vs. :  
: McGinn, Smith & Co., Inc. :  
Richard Denero :  
: Respondents :  
-----

CASE SUMMARY

Claimants Robert M. and Barbara J. Hunter, John and Sandra McClellan, and Gregory and Cathy McClellan (collectively, the "Claimants") alleged that Respondent Richard T. Denero's ("Denero") recommendation of, and the Claimants' subsequent investment in, a company by the name of Consumer Communications Corporation ("CCC") was wholly inappropriate and unsuitable for the Claimants given their overall investment objectives, and that Denero failed to explain the speculative nature and risks inherent with this investment. Claimants also alleged that at all relevant times Denero represented himself as a representative of Respondent McGinn, Smith, Inc. ("McGinn, Smith"), and that McGinn, Smith failed to properly supervise the activities of Denero, breaching their fiduciary duties owed to the Claimants to properly manage their monies.

Respondent McGinn, Smith contended that the CCC investment was not a McGinn, Smith product, nor being brokered by its employees pursuant to any type of dealer agreement, therefore the Claimants had no reasonable basis to believe that McGinn, Smith was involved with this investment. McGinn, Smith also contended that neither McGinn, Smith, nor its principals, knew or had any reason to know that Denero had involved the Claimants in CCC, and that Denero was acting in his individual capacity and not as an employee or agent of McGinn, Smith at all relevant times to this claim.

Respondent Denero contended that he believed CCC to be a suitable investment for the Claimants at the time of the initial transaction, that he made no misrepresentations, and that he supplied the Claimants with all available information about CCC. Denero contended he told the Claimants that CCC was not a McGinn, Smith product, and also contended that he never received any remuneration from either McGinn, Smith or CCC from introducing the Claimants to CCC.

### RELIEF REQUESTED

Claimants Jon S. and Sandra McClellan requested actual damages of \$25,000.00 plus interest from February 10, 1986, plus costs and attorney's fees. Claimants Gregory S. and Cathy McClellan requested actual damages of \$25,000.00 plus interest from February 10, 1986, plus costs and attorney's fees. Claimants Robert M. and Barbara J. Hunter requested actual damages of \$50,000.00 plus interest from February 10, 1986, plus costs and attorney's fees.

Respondent McGinn, Smith & Co., Inc. requested dismissal of the Statement of Claim in its entirety, plus costs and fees. Respondent Richard T. Denero requested dismissal of the Statement of Claim in its entirety.

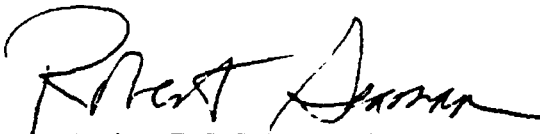
### AWARD

On April 26, 27, May 14, 15, June 5 and 6, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants Jon S. & Sandra McClellan, Gregory S. & Cathy McClellan, and Robert M. and Barbara J. Hunter on February 3, 1989, by Respondent McGinn, Smith & Co., Inc. on May 3, 1989 and not by Respondent Richard T. Denero as required by Section 12 of the NASD's Code of Arbitration Procedure. The initial claim was filed on February 6, 1989. The hearings were conducted in Albany, NY and consisted of eleven (11) hearing sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at and after the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

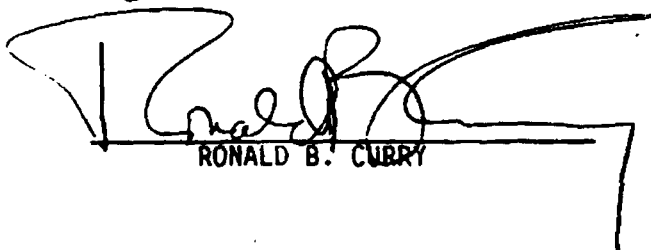
1. Pursuant to the by-laws of the NASD, the arbitrators determined that Respondent Richard T. Denero was required to submit to this arbitration and is bound by this panel's rulings and determinations.
2. At the hearing, after the conclusion of Respondent Richard Denero's testimony but before the conclusion of the hearing, the arbitrators were informed that Respondent Richard Denero had filed bankruptcy pursuant to Chapter 7 of the U.S. Bankruptcy Code. Therefore, pursuant to the automatic stay provisions of U.S. Bankruptcy Code, this action was stayed as against Respondent Richard Denero, and proceeded in Respondent Denero's absence without prejudice to the Claimants.
3. All claims against Respondent McGinn, Smith & Co., Inc. be and hereby are dismissed in their entirety.
4. The parties each shall bear their respective costs including attorney's fees.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$1000.00 filing fee previously deposited by the Claimants, and all Claimants be and hereby are jointly and severally liable and shall pay to the National Association

of Securities Dealers, Inc. the sum of Ten Thousand Dollars and No Cents (\$10,000.00), as costs of the eleven (11) hearing sessions conducted in this matter.

CONCURRING ARBITRATORS

  
\_\_\_\_\_  
ROBERT SEAMAN

  
\_\_\_\_\_  
J. CLARK WINSLOW

  
\_\_\_\_\_  
RONALD B. CURRY

DATED: July 31st, 1990