



Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
Suite 1680  
Three First National Plaza  
Chicago, IL 60602  
(312) 899-4440

In the Matter of the Arbitration Between

Name of Claimant(s)

Donna L. Montgomery  
Donald E. Montgomery  
Timothy J. Montgomery  
St. John's Publishing, Inc.

89-02563

Name of Respondent(s)

Dain Bosworth, Inc.

**Case Summary**

Donna L. Montgomery, Donald E. Montgomery, Timothy J. Montgomery, and St. John's Publishing, Inc. (collectively referred to herein as "Claimants") alleged that Dain Bosworth, Inc. ("Respondent") 1) made material misrepresentations and omissions regarding Phoenix Canada Oil Securities ("Phoenix"), margin trading, and the services that they could provide to the Claimants, 2) made unauthorized transactions in their accounts, and 3) made unsuitable recommendations to the Claimants in light of the financial objectives and condition.

Respondent denied the claims of the Claimant and further alleged that the Claimants 1) were aware of and assumed the risks related to their purchase of Phoenix and margin, 2) authorized all of the transactions in their accounts, 3) failed to mitigate their damages, 4) made their own decision to purchase Phoenix knowing the nature of the security, 4) are barred from recovery under the doctrines of ratification, contributory negligence, assumption of the risk, estoppel, laches, and waiver.

**Relief Requested**

The Claimant requested damages of \$45,000.00, plus interest, punitive damages, and costs. Respondent requested that the claims of the Claimants be dismissed.

Award

On September 14, 1989 the National Association of Securities Dealers ("NASD") received the Claimants' claim. On November 27, 1990 in Minneapolis, Minnesota during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in the submissions to arbitration signed on September 8, 1989 by the Claimants and on January 3, 1990 by Marcia L. Jansen on Behalf of the Respondent.

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. The Respondent shall be liable for and shall pay to Donna L. Montgomery and Timothy J. Montgomery, persons whose names appear on the account numbered 57946000, Ten Thousand Four Hundred Fifty One Dollars and no cents (\$10,451.00).
2. All claims alleged by St. John's Publishing, Inc. against the Respondents are hereby dismissed.
3. Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the NASD shall refund the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant and the Respondent shall pay to the NASD \$800.00 as forum fees.

Arbitrator(s) Signature

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Kevin Keenan, Esq.

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James L. Glere

*Wendy A. Sacha*  
Wendy A. Sacha

### Award

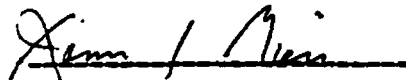
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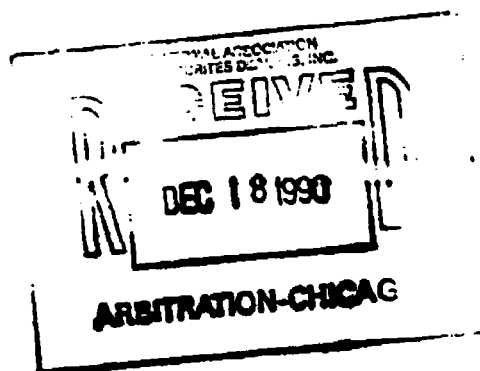
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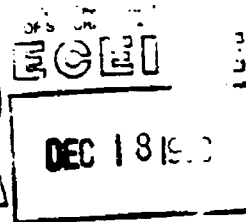
Kevin Keenan, Esq.

  
James L. Glare

Wendy A. Sacha



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