

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

IN THE MATTER OF THE ARBITRATION BETWEEN :
Salem Volunteer Fire Department, Inc. :
 :
 : Claimant :
vs. : Case No. 89-03415
 :
 : AWARD
McGinn, Smith & Co., Inc. :
 :
 : Respondent :
vs. :
 :
Robert Hunter :
 :
 : Third-Party :
 : Respondent :

CASE SUMMARY

Claimant Salem Volunteer Fire Department, Inc. alleged that Respondent McGinn, Smith & Co., Inc. breached its contractual obligations to the Claimant by failing to properly account for the disappearance of certain monies from the Claimant's account. Specifically, the Claimant alleged that \$10,000.00 were wrongfully converted, embezzled and/or stolen from the Claimant's account.

Respondent McGinn, Smith contended that the claim was not timely filed and therefore should be barred by the applicable statute of limitations. Respondent McGinn, Smith also contended that the complained of transaction either involved a loan with a former employee of McGinn, Smith who then failed to pay, or this employee somehow importuned the check from McGinn, Smith, or from the Third-Party Respondent Robert Hunter, and then either made, or obtained, the endorsement to a company not affiliated with McGinn, Smith. Respondent McGinn, Smith asserted a third-party claim in which they alleged that if the Claimant suffered a loss it occurred, in whole or in part, because of the negligence or culpable conduct of Robert Hunter. Respondent Hunter denied all allegations made against him.

RELIEF REQUESTED

Claimant Salem Volunteer Fire Department, Inc. requested actual damages of \$7,193.35, plus interest from September 23, 1986; an accounting of all monies ever deposited with, held by, invested or administered by McGinn, Smith; that Respondent McGinn, Smith produce the original check specimen in question, and costs. Respondent McGinn, Smith requested that the Claim be dismissed in its

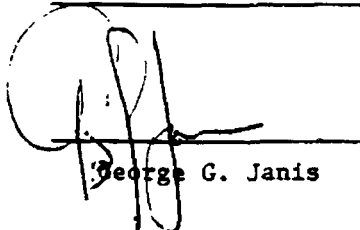
entirety or, in the alternative, that if the Claimant is awarded any damages from Respondent McGinn, Smith, that McGinn, Smith be awarded damages in said amount against third-party Respondent Robert Hunter, plus costs and attorney's fees. Third-Party Respondent Hunter requested dismissal of all claims made against him, plus costs and attorney's fees.

AWARD

On June 14, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Salem Volunteer Fire Department, Inc. on November 27, 1989, and by Respondent McGinn, Smith & Co., Inc. on January 10, 1990 and by Third-Party Respondent Robert Hunter on March 10, 1990. The initial claim was filed on December 5, 1989. The hearing were conducted in Albany, NY and consisted of two (2) hearing sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondent McGinn, Smith & Co., Inc. be and hereby dismissed in their entirety.
2. All claims and third-party claims against Third-Party Respondent Robert Hunter be and hereby are dismissed in their entirety.
3. The parties each shall bear their respective costs, including attorney's fees.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$400.00 filing fee previously deposited by the Claimant, and the Respondent McGinn, Smith be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of \$400.00, as costs of the two(2) hearing sessions conducted in this matter. Also, Respondent McGinn, Smith be and hereby is liable and shall pay to the Claimants the sum of \$400.00 to offset the filing fee previously deposited by the Claimants.

CONCURRING ARBITRATOR



George G. Janis

DATED: August 23rd, 1990