

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Jon Martin

**Claimant**

**vs.**

**CASE #90-01805**  
**AWARD**

F. Scott Smith  
Bayview Securities

**Respondents :**

### CASE SUMMARY

Pro Se Claimant, Jon Martin, in a claim filed with the National Association of Securities Dealers, Inc. on December 12, 1990, alleged that Respondents have failed, after repeated requests, to close his account and refund the money therein. He continued that Mr. Smith as President of Bayview Securities is responsible for solicitations made by former broker, George Lanning, and for the use by Mr. Lanning of Bayview Securities letterhead to solicit claimant's money.

Respondent, F. Scott Smith, individually and as President of Bayview Securities, by their attorney, Robert P. Johnson, Portland, OR, requested a hearing to determine the issues in this case. They continue that Respondents question whether or not they are proper parties in this case as it seems that Mr. Martin's father tendered payment to Mr. Lanning for an investment club through First Options of Chicago, Inc., not Bayview Securities. Mr. Smith states that he as an individual is not a proper party.

Mr. Smith, in a separate response dated May 21, 1991, maintains that Bayview received a check from Mr. Martin to be invested in the Phoenix Option Club at which time the funds were forwarded to Emmett A. Larkin Co., Inc. Bayview's correspondent, to be deposited into the Phoenix account. He states that he believes Mr. Martin's check was made payable to Phoenix and that, therefore, Bayview is not at fault if the investment is lost. He affirms that if Bayview made an error in depositing Claimant's check into the wrong account, he needs to see a copy of the cancelled check made payable to Bayview.

Claimant amended his Claim on December 5, 1990 to state that he is unable to attend a hearing and affirms his request for a

decision on the pleadings. He states that the money tendered was a gift from his father but tendered by him to Bayview Securities of which Mr. Smith is President and that the solicitation was on Bayview letterhead and receipted on a Bayview receipt, not First Options, Inc.

Claimant, in a second amendment dated March 6, 1991, adds a punitive damage claim for not properly banking his customer money into an account in his name or properly sending any receipts of buy/sell transactions.

#### RELIEF REQUESTED

Claimant requests actual damages of Five Hundred Dollars and No Cents (\$500.00), treble damages, punitive damages of Two Thousand Dollars and No Cents (\$2,000.00), interest and costs.

Respondents request a hearing to determine the case and ask that the claim be for naught.

#### AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration, a single Public Arbitrator, William L. Hawes, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on June 14, 1990 and by the Respondents on July 23, 1990;

And, that the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:


1. That the Respondents, F. Scott Smith and Bayview Securities, are jointly and severally liable and shall pay to the Claimant, Jon Martin, the sum of Six Hundred Sixteen Dollars and Thirty Cents (\$616.30) said sum which includes interest on the original Five Hundred Dollars and No Cents (\$500.00) investment.
2. That Claimants' request for treble and punitive damages be, and hereby are, dismissed.
3. That Respondents' request for a hearing be, and hereby is, denied.

Page Three  
Award #90-01805

4. The Thirty Dollars and No Cents (\$30.00) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. and is assessed against the Respondent F. Scott Smith who shall pay Thirty Dollars and No Cents (\$30.00) to Claimant Jon Martin.

AFFIRMATION

I, **WILLIAM L. HAWES**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
\_\_\_\_\_  
Signature of Arbitrator

DATED: 9/17/91