

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

John D. & Jeanne Kriens

91-00689

Name of Respondent(s)

Dain Bosworth Incorporated  
Charles J. Feenstra

REPRESENTATION

For Claimants: Frank J. Susak, Esq. of the Law Offices of Frank J. Susak, Esq.

For Respondent Dain Bosworth: Mark Turner, Esq. of Ater, Wynne, Hewitt, Dodson and Skerrett

For Respondent Feenstra: Pro per

CASE INFORMATION

Statement of Claim filed: March 5, 1991

Amended Statement of Claim filed: August 28, 1991

Claimants' Submission Agreement signed on: February 25, 1991

Statement of Answer filed by Respondent Dain Bosworth Inc. on: May 17, 1991

Response to Amended Statement of Claim filed by Respondent Dain Bosworth, Inc. on: October 3, 1991

Respondent Dain Bosworth's Submission Agreement signed: April, 1991

HEARING INFORMATION

Pre-Hearing Conference(s): None

Hearing Date(s)/Session(s): December 3, 1991 / one session.

Hearing Location: Portland, Oregon

CASE SUMMARY

Claimants alleged that Respondent Feenstra made false representations concerning the status of Claimants' account; that Feenstra had taken the Claimants' funds and used those funds for his own purposes; that Feenstra has refused and continues to refuse to pay on a promissory note; and that Dain Bosworth was negligent in the hiring and supervision of Feenstra.

Respondent Dain Bosworth, Inc. denied any liability whatsoever and alleged that the acts described in the Statement of Claim were acts performed by Feenstra outside the scope of his employment with Dain Bosworth, that Dain Bosworth exercised all appropriate care in supervising the activities of Feenstra and that any dispute that Claimants have is with Feenstra directly, not with Dain Bosworth. Dain Bosworth also alleged that Feenstra, in conjunction with Claimants, intentionally avoided supervisory and compliance procedures employed by Dain Bosworth and that Dain Bosworth was neither negligent in hiring Feenstra, nor in monitoring Claimants' account.

#### RELIEF REQUESTED

Claimants requested money damages from Respondents Feenstra and Dain Bosworth, Inc. in the total sum of \$78,615, and from Respondent Feenstra in the amount of \$70,755 on the promissory note. Claimants also requested punitive damages from Respondents in the sum of \$100,000.

Respondent Dain Bosworth requested that Claimants' claim be dismissed and that Claimants take nothing.

#### OTHER ISSUES CONSIDERED AND DECIDED

The claim against Dain Bosworth, Inc. were settled prior to the hearing. The hearing proceeded against Respondent Feenstra alone.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

#### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to the terms of the promissory note dated October 2, 1990, Respondent Feenstra is liable for and shall pay to Claimants the sum of Seventy Thousand Seven Hundred Seventy Five Dollars (\$70,775), less any amounts that Feenstra has previously paid to Claimants and less any amounts that have been paid to Claimants by Dain Bosworth, Inc. representing the balance of Claimants' joint account.
2. Respondent Feenstra is liable for and shall pay to Claimants interest on the net sum due under paragraph 1, above, at the rate of nine percent (9%) per annum from the date of this award until the full amount due is paid to Claimants.
3. The panel finds that by Feenstra's own admission, Feenstra misrepresented the balances in Claimants' account.
4. Claimants' request for punitive damages is denied.

5. Claimants' request for attorneys fees is denied.
6. Each party shall bear its own costs and attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$200 nonrefundable filing fee and the \$750 hearing session deposit previously paid by the Claimants. Respondent Feenstra is liable for reimbursing Claimants \$425 of said fees.

ARBITRATION PANEL

	<u>Public/Industry</u>
	Industry
1.	Public Chairperson
	Public

s' Signatures

Thomas Joseph, Jr.  
Thomas Joseph, Jr., Esq.

Date of Decision: 12/21/91

Served Dec 20, 1991