

MODIFIED N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Johnson, McKenney & Carr Securities

vs.

Case #  
92-04080

Name of Respondents

Kazi A.F.S. Hasan  
Elton Johnson, Jr.

vs.

Third-Party Respondent

Edward M. Growney, Jr.

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**REPRESENTATION**

For Claimant: Elton Johnson, Jr., Thomas J. Hanrahan, Esq.

For Respondent: J. Edward Meyer, Esq.

**CASE INFORMATION**

Statement of Claim filed: December 2, 1992.

Claimant's Submission Agreement signed on: November 28, 1992.

Joint Statement of Answer, Counterclaim and Third-Party Claim filed by Respondents, Kasi A.F.S. Hasan and Edward Michael Growney on: March 9, 1993.

Respondent, Kasi A.F.S. Hasan's Submission Agreement signed on: March 8, 1993.

Respondent, Edward Michael Growney's Submission Agreement signed on: March 8, 1993.

### HEARING INFORMATION

Hearing Dates/Sessions: November 8, 1993/2 sessions  
November 9, 1993/2 sessions  
December 3, 1993/1 session

Hearing location: NASD offices located in New York City.

### CASE SUMMARY

Claimant alleges that an agreement was entered into whereby Respondents became 48% owners of Claimant's Broker/Dealer firm, Johnson McKenney & Carr Securities, Inc. ("JMCS"), after Claimant was told by Respondent Kasi A.F.S. Hasan ("Hasan") that he could put \$500,000 worth of capital into JMCS immediately. Claimant further alleges that after entering into the agreement he learned that Respondent Hasan and his previous firm had a long list of regulatory problems and customer complaints. Claimant further alleges that, in order to fulfill his promise to capitalize JMCS, Respondent Hasan came up with 500,000 shares of restricted stock in International Bankcard Services Company ("IBSC") and the necessary documents to show that this certificate was free and clear, including two legal opinions from IBSC which Respondents were able to obtain by somehow getting IBSC to appoint their own personal attorney as special counsel.

Claimant further alleges that Respondents failed to respond to NASD requests for additional information from Respondents regarding their past regulatory problems and the origin of the IBSC stock and JMCS was never approved as a \$25,000 BD and Respondents were never approved as new owners as a result. Claimant further alleges that Respondents' failure to cooperate with the NASD office regarding the firm's approval as a \$25,000 BD cost the firm \$90,000 in commissions. Claimant also alleges that Respondent Hasan never fulfilled a promise to pay the salary of Diane Keady. Claimant further alleges that after shutting down the firm, Respondents arranged to have the new legal counsel for IBSC put a temporary stop transfer on the IBSC stock.

Claimant alleges that Respondent Hasan's conduct constitutes violations of Article III, Section 1 of the NASD Rules of Fair Practice and that Respondent Growney, by being Respondent Hasan's partner and remaining silent and going along with all Respondent Hasan's activities, is just as guilty as Respondent Hasan.

Respondents maintain that as part of their contributions to Claimant, they paid \$12,250, plus 10,000 shares of IBSC and 100,000 shares of the common stock of Associated Healthcare Industries, Inc. Respondents deny that they agreed to contribute \$500,000 in capital to Claimant. Respondents also maintain that the 500,000 shares of IBSC were lent to Claimant

with the understanding that they would not be sold without the consent of Respondents and deny that this loan was intended to meet Claimant's net capital requirements. Respondents further maintain that they fully cooperated with the NASD in all regulatory matters relating to Claimant and deny that they ever failed or refused to respond to NASD requests and inquiries. Respondents also deny that they used deception and subterfuge to obtain a stop transfer against the IBSC stock. Respondents also deny that they breached any promises concerning the payment of salaries or expenses of Claimant.

Respondents assert a Counterclaim and a Third-Party Claim against Elton Johnson ("Respondent Johnson") in which they allege that, contrary to the understandings between the parties, Respondent Johnson sold approximately \$20,000 of IBSC stock owned by Respondents. Respondents further allege that Claimant and Respondent Johnson have refused to return to Respondents the 500,000 shares of the common stock of IBSC, and such refusal constitutes a misappropriation of assets. Respondents further allege that they suffered a loss of business in the amount of \$100,000 as a result of the mismanagement and false statements of Respondent Johnson concerning his business, expertise and qualifications. Respondents allege that Claimant and Respondent Johnson are jointly and severally liable for these damages.

#### **RELIEF REQUESTED**

Claimant requests an award for damages in the amount of \$90,000. Claimant and Elton Johnson also request that the claims against them be denied.

Respondents request an award for damages in the amount of \$120,000, and a dismissal of the claims against them.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- A. The Respondents, jointly and severally, shall pay to the Claimant the total sum of \$35,715.50 to be paid in the following manner:
  1. \$20,050.50 to be deposited to the Johnson McKenney & Carr account at Kennedy, Cabot & Co., Inc. (account number 875-10984) to discharge the debit balance therein; and
  2. \$15,665.00 to be paid directly to Diane Louise Keady, the claimant in the arbitration entitled Diane Louise Keady v Johnson, McKenney & Carr Securities, NASD No. 92-02089;
- B. Promptly upon discharge of the foregoing payments, the stock certificates representing

500,000 shares of International Bankcard Services Corp. shall be returned to Respondent Hasan; Claimant and Third-Party Respondent Elton Johnson shall cooperate and take all steps necessary to accomplish return of said shares in compliance with this paragraph;

- C. The Counterclaim and Third-Party Claim against Elton Johnson are dismissed in their entirety; and
- D. The forum fees are assessed against the Respondents jointly and severally.

In making the foregoing award the arbitrators have considered the pleadings included in Arbitrator's Exhibit 1; the proofs and arguments of the parties at the hearing; the additional documents requested by the arbitrators following the hearing; and the letter of J. Edward Meyer, Esq., dated December 10, 1993.

#### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Claim Filing Fee - \$500.00.  
Counterclaim and Third-Party Claim - \$500.00.  
Hearing Sessions Fees - \$3,750.00 (5 sessions x \$750 per session)  
Total Due = \$4,750.00.

1. Claimant is assessed a \$500.00 non-refundable claim filing fee. Claimant deposited \$600.00 and is entitled to a refund of \$100.00.
2. Respondents, Hasan and Growney, are jointly and severally assessed \$4,250.00. Respondents shall satisfy this assessment by reimbursing Claimant \$100.00 and remitting the balance, \$4,150.00, to the NASD.
3. Claimant requested and was granted a postponement of the hearing scheduled for September 1 and 2, 1993. The postponement fee is waived.

Fees shall be made payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Thomas M. Campbell, Esq.	-	Industry Chairperson
Lawrence L. Halpern	-	Industry Panelist
R. Bruce Reymann	-	Industry Panelist

Concurring Arbitrator's Signature  
Name

  
R. Bruce Reymann

Date of Decision: June 28, 1994

STATE OF NEW YORK  
COUNTY OF *New York*

S.S.:

On this *24* day of *June*, 1994, before me personally appeared R. Bruce Reymann known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.




ANNE C. GRANVILLE  
NOTARY PUBLIC, State of New York  
No. 24-01GR4743126  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires May 31, 1995

ARBITRATION PANEL

Thomas M. Campbell, Esq. -	Industry Chairperson
Lawrence L. Halpern -	Industry Panelist
R. Bruce Reymann -	Industry Panelist

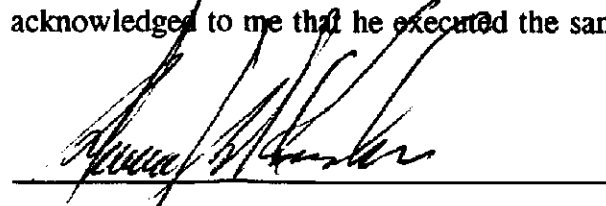
Concurring Arbitrator's Signature  
Name

  
Lawrence L. Halpern

Date of Decision: June 28, 1994

STATE OF NEW YORK *New York* s.s.:  
COUNTY OF *New York*

On this *24* day of *JUNE* 1994, before me personally appeared Lawrence L. Halpern known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

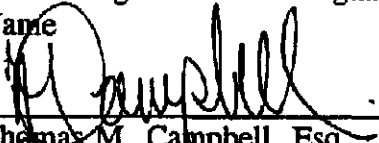


DAVID D. KESSLER  
Notary Public, State of New York  
No. 24-2101010  
Qualified in Nassau County  
Commission Expires *7/31/95*

ARBITRATION PANEL

Thomas M. Campbell, Esq.	-	Industry Chairperson
Lawrence L. Halpern	-	Industry Panelist
R. Bruce Reymann	-	Industry Panelist

Concurring Arbitrator's Signature  
Name

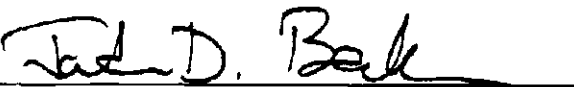
  
Thomas M. Campbell, Esq.

Date of Decision: June 28, 1994

STATE OF NEW YORK  
COUNTY OF New York

S.S.:

On this 28 day of June, 1994, before me personally appeared Thomas M. Campbell known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



JORDAN D. BECKER  
Notary Public, State of New York  
No. 60-5001832  
Qualified in Westchester County  
Commission Expires 9/14/94