

## N.A.S.D. AWARD

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

John C. West

93-01356

Name of Respondents

J.W. Gant and Associates, Inc.  
Hanifen, Imhoff, Inc.  
Steven Paul Shipley

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 5, 1993, Claimant John C. West, who appeared Pro Se, alleged that in June, 1992 he received an unsolicited telephone call from Respondent Steven Paul Shipley of Respondent J.W. Gant and Associates, Inc. recommending that he purchase Magnetech Corp. stock. Claimant further alleged that in early July 1992 this sale was halted abruptly due to Respondent J.W. Gant and Associates, Inc. merger transactions with Dickinson & Co. simultaneous with them receiving his check in the amount of \$1,125.00, at which time Respondent Steven Paul Shipley told Claimant that the transaction would not be carried out and that he would either return the check or hold it until further notice pending Claimant's approval to proceed and his permission to trade pending merger outcome. Claimant contended that in late July, 1992 he was informed that his account balance at Respondent Hanifen, Imhoff, Inc. was \$148.48 at which time, Claimant was surprised that any of his money and how little of it, was with them. Claimant further contended that on August 31, 1992 he wrote to Mr. Glenn Cushman of Dickinson & Co., apprising him of the problem whereby he refers Claimant to Respondent Hanifen, Imhoff, Inc. and subsequently, on October 7, 1992, Respondent Hanifen, Imhoff, Inc. refers his complaint to Respondent J.W. Gant & Associates, Inc., at which time, his October 12, 1992 letter to Respondent J.W. Gant & Associates, Inc. remains unanswered. Claimant asserted that feeling that he has made a best and honest effort to resolve this matter and failing to receive appropriate resolution, Claimant seeks recovery for his losses from Respondents.

Respondent Hanifen, Imhoff, Inc., by and through their counsel David B. Kelly of Ballard Spahr Andrews & Ingersoll, Denver, Colorado, maintained that it is important to understand Respondent Hanifen, Imhoff, Inc.'s relationship to Respondent J.W. Gant & Associates, Inc. and its lack of relationship with Claimant John C. West whereby Respondent Hanifen, Imhoff, Inc. acted solely as clearing agent for Respondent J.W. Gant & Associates, Inc. Respondent Hanifen, Imhoff, Inc. further maintained that Respondent J.W. Gant & Associates, Inc. through Respondent Steven Paul Shipley, initially contacted Claimant in June 1992 and based on the allegations in the Statement of Claim, Claimant decided to invest in Magnetech Corp. stock upon the recommendation of Respondent Steven Paul Shipley whereby Claimant sent a check to him in the amount of \$1,125.00 at which time, Claimant alleges, however; that Respondent Steven Paul Shipley informed him that the purchase of Magnetech stock would not be completed because of pending merger discussions. Respondent Hanifen, Imhoff, Inc. contended that they had no independent knowledge of the alleged recommendations and representations made by Respondent Steven Paul Shipley or other Respondent J.W. Gant & Associates, Inc. employees to Claimant. Respondent Hanifen, Imhoff, Inc. further contended that on June 26, 1992, they executed orders for Respondent J.W. Gant & Associates, Inc. customer, Claimant and the 5,000 shares of Magnetech stock was purchased at \$0.45 a share. Respondent Hanifen, Imhoff, Inc. asserted that Respondent J.W. Gant & Associates, Inc. did not receive full payment from Claimant and thus on July 9, 1992 they sold Claimant's Magnetech stock at \$0.28462 per share and because of the decrease in value of Magnetech stock, Claimant's investment of \$1,125.00 decreased to \$148.48, for a net loss of \$976.52. Respondent Hanifen, Imhoff, Inc. further asserted that they cannot be liable for Claimant's loss because Claimant was not a customer of Respondent Hanifen, Imhoff, Inc. as of the trade dates, rather, Claimant was a customer of Respondent J.W. Gant & Associates, Inc. and they merely cleared its transactions through Respondent Hanifen, Imhoff, Inc. Respondent Hanifen, Imhoff, Inc. further maintained that they also had no communication with, and made no recommendations to, Claimant thus if Claimant has a claim for relief, it is against Respondents J.W. Gant & Associates, Inc. and Steven Paul Shipley.

Respondent Steven Paul Shipley, who appeared Pro Se, maintained that in June 1992, he contacted Claimant John C. West to discuss the possibility of purchasing shares in Magnetech Corp., at which time Respondent Steven Paul Shipley explained the financials, the management, the trading history, the bid and ask, and the details of the business engaged in by Magnetech Corp. whereby Claimant authorized Respondent Steven Paul Shipley to open the account and purchase 2,500 shares of Magnetech. Respondent Steven Paul Shipley further maintained that Claimant told him that he would mail a check that day because he would be out of town past the settlement date. Respondent Steven Paul Shipley contended that he denies that, in July 1992, he instructed Claimant that his trade was "halted abruptly" or "would not be carried out"; however, Respondent Steven Paul Shipley asserted that he told Claimant that all accounts were being transferred to another firm and that, since he did not have any access to Quotron, he told Claimant that all sell transactions would be executed but the buy transactions may not be executed or, in fact, may be cancelled whereby Respondent Steven Paul Shipley merely told

Claimant that his buy transaction possibly was not executed and that, if cancelled or not executed, his money would be held in his account until Respondent Steven Paul Shipley was able to execute the buy trade per Claimant's instructions. Respondent Steven Paul Shipley contended that while he sympathizes with the fact that Claimant lost money as a result of a trading error, Claimant has shown no corroborating evidence that Respondent Steven Paul Shipley represented that the trade Claimant authorized would definitely be cancelled and any losses sustained by Claimant were due to market conditions and/or Claimant's own conduct and not as a result of any wrongful conduct on the part of Respondent Steven Paul Shipley.

Respondent J.W. Gant & Associates, Inc. failed to file an Answer to the Statement of Claim.

#### **RELIEF REQUESTED**

Claimant John C. West requested the sum of \$1,125.00 in actual damages.

Respondent Hanifen, Imhoff, Inc. requested the claim be dismissed and they be awarded costs and expenses.

Respondent Steven Paul Shipley requested the claim be dismissed and he be awarded costs of defense, including attorney's fees.

Respondent J.W. Gant & Associates, Inc. failed to file an Answer to the Statement of Claim.

#### **OTHER ISSUES CONSIDERED & DECIDED**

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent J.W. Gant & Associates, Inc. was served a copy of the Statement of Claim by regular mail on April 23, 1993 and given an opportunity to respond, which they failed to do.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent J.W. Gant & Associates, Inc. was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Richard B. Laden, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 29, 1993, by the Respondent Hanifen, Imhoff, Inc. on May

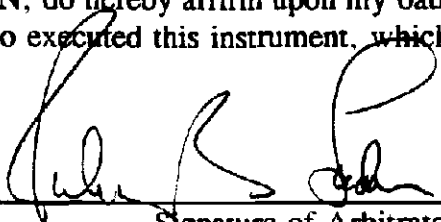
28, 1993, by the Respondent Steven Paul Shipley on October 8, 1993 and not by Respondent J.W. Gant & Associates, Inc. as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

And, 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. Respondents Hanifen, Imhoff, Inc., J.W. Gant & Associates, Inc. and Steven Paul Shipley are jointly and severally liable and shall pay to the Claimant John C. West the sum of \$976.52 in damages.
2. Respondents Hanifen, Imhoff, Inc., J.W. Gant & Associates, Inc. and Steven Paul Shipley are jointly and severally liable and shall pay to the Claimant John C. West simple interest at the rate of 6% per annum from August 1, 1992 to the date of payment of the award.
3. The parties shall bear their respective costs, including attorney's fees.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant John C. West shall be retained by the NASD, Inc. Respondents Hanifen, Imhoff, Inc., J.W. Gant & Associates, Inc. and Steven Paul Shipley are jointly and severally liable and shall pay to the Claimant the sum of \$50.00, as reimbursement.

**AFFIRMATION**

I, **RICHARD B. LADEN**, 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.

  
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Signature of Arbitrator

DATE OF DECISION: December 14, 1993