

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

5/96

Name of Claimant, Counterclaim Respondent

George Hellen

and

95-03164

Name of Respondents Counterclaimants

Smith, Benton & Hughes, Inc.  
Michael Zaman

**REPRESENTATION OF PARTIES**

George Hellen ("Claimant") was represented by Miles M. Gersh, Esq., Gersh & Danielson, Denver, Colorado.

Smith, Benton & Hughes, Inc. ("Respondent Smith, Benton & Hughes") and Michael Zaman ("Respondent Zaman") (collectively as "Respondents") were represented by Irving M. Einhorn, Esq., Einhorn & Edgerton, Los Angeles, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 30, 1995. Claimant's Reply to Respondents' Counterclaims was dated September 28, 1995. Submission Agreement of Claimant George Hellen was signed on June 26, 1995.

Answer and Counterclaims of Respondents Smith, Benton & Hughes, Inc. and Michael Zaman was filed on or about September 14, 1995. Submission Agreement of Respondent Smith, Benton & Hughes, Inc. was signed on September 14, 1995 by Michael Zaman.

**HEARING INFORMATION**

The hearing was held on Wednesday, April 24, 1996 for two (2) sessions and Thursday, April 25, 1996 for two (2) sessions in Denver, Colorado for a total of four (4) sessions.

### **CASE SUMMARY**

Claimant alleged that he was hired to work as a retail trader and sales manager for Respondent Smith, Benton & Hughes and was not paid his wages. Specifically, Claimant alleged that he was to be paid a percentage of the realized profits from his trading and a monthly draw. In his response to the Counterclaim, Claimant denied receiving an illegal payment to induce Smith, Benton & Hughes to make a market and specifically stated that he had received a loan from a promoter of the stock. Claimant stated that the purpose of the loan was to comply with a condition imposed upon him by Smith, Benton & Hughes for him to participate in the trading profits.

Respondents denied the allegations set forth in the Statement of Claim. In their Counterclaims Respondents specifically stated that Claimant had received illegal payments to induce Smith, Benton & Hughes to make a market in Sky Scientific. Respondents alleged that they have incurred substantial expenses relating to the investigation of their relationship with Sky Scientific.

### **RELIEF REQUESTED**

Claimant requested an award of joint and several liability against Respondents in an amount not less than \$125,000, expert witness fees pursuant to Colorado statute § 13-33-102, interest and attorneys' fees pursuant to Colorado statute § 8-4-114.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In the counterclaim asserted in this matter, Respondents requested an award in the amount of at least \$37,000.

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

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Smith Benton & Hughes, Inc. shall be and hereby is liable for and shall pay to the Claimant George Hellen the sum of sixty six thousand three hundred fifty nine dollars and ten cents (\$66,359.10) which sum includes an award of interest from November 1, 1994 through May 1, 1996.

2. The claims ~~asserted against~~ Respondent ~~Michael Zaman~~ shall be and hereby are dismissed.
3. Each party ~~shall~~ bear its own costs, expenses and attorneys' fees ~~incurred in this~~ matter not specifically ~~enumerated~~ herein.

### **FORUM FEES**

Forum fees are ~~calculated~~ at the rate of \$750 per hearing session and \$300 for each ~~prehearing~~ conference, if any. ~~There were~~ four (4) sessions x ~~\$750 = \$3,000~~ in forum fees. Pursuant to §43(b) a ~~hearing~~ session is ~~any~~ meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, ~~which~~ lasts four (4) hours or less.

Pursuant to §44(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall ~~retain~~ the non-refundable filing fee in the amount of \$500 and shall ~~retain~~ as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant George Hellen. Claimant George Hellen shall be and hereby is liable for and shall pay to the NASD the sum of \$750 as forum fees.

Pursuant to §44(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall ~~retain~~ the non-refundable filing fee in the amount of \$250 and shall retain as forum fees the hearing session deposit in the amount of \$600 previously deposited with the NASD by Smith Benton & Hughes, Inc. Respondent Smith Benton & Hughes, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$900 as the balance due for forum fees,

Pursuant to §45 of the NASD Code of Arbitration Procedure, the NASD shall retain the non-refundable member surcharge in the amount of \$350. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ Donald P. Loyd, Esq.  
Donald P. Loyd, Esq.  
Industry Arbitrator, Presiding Chair

May 13, 1996

/s/ William A. Conklin  
William A. Conklin  
Industry Arbitrator

May 14, 1996

/s/ Devra Perch  
Devra Perch  
Industry Arbitrator

May 21, 1996