

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Barbara Hoops-McCormack

and

96-01650

Name of Respondent

Smith Benton & Hughes, Inc.

Michael Zaman

REPRESENTATION OF PARTIES

Barbara Hoops-McCormack ("Claimant") was represented by D. Elizabeth Wills, Esq., Brenman, Key & Bromberg, P.C., Denver, Colorado.

Smith Benton & Hughes, Inc. ("Respondent SBH") and Michael Zaman ("Respondent Zaman") were represented by Irving Einhorn, Esq., Los Angeles, California.

CASE INFORMATION

The Statement of Claim was filed on or about April 16, 1996. Submission Agreement of Claimant Barbara Hoops-McCormack was signed on March 27, 1996.

Statement of Answer was filed by Respondent Smith Benton & Hughes, Inc. and Michael Zaman on or about June 18, 1996. Submission Agreement of Respondent Smith Benton & Hughes, Inc. was signed on June 10, 1996 by Mike Zaman. Submission Agreement of Respondent Michael Zaman was signed on June 10, 1996.

HEARING INFORMATION

The hearing was held on Wednesday, February 19, 1997 for two (2) session and Thursday, February 20, 1997 for two (2) sessions in Denver, Colorado for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that Respondents breached their contract; violated C.R.S. §8-4-104 by failing to pay her compensation earned at the time of her resignation; engaged in negligent misrepresentation

or concealment; and engaged fraudulent misrepresentation or concealment. Specifically, Claimant alleged that Respondents breach their contract with her by failing:

- ▶ to obtain clearance to trade another 65 stocks;
- ▶ failing to provide her with the ability to select and trade the additional 65 stocks;
- ▶ failing to provide her with the necessary equipment to effectively trade securities;
- ▶ failing to pay her on a timely basis; and
- ▶ failing to pay her compensation in accordance with her employment contract.

It was further alleged by Claimant that prior to accepting employment at Respondent SBH, Respondent Zaman represented to her that she would have her own machine to effect trades on, that the firm was in the process of obtaining permission to trade an additional 65 stocks, the firm was in the process of obtaining trading tools, and that there was going to be a capital infusion into the firm.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically denied that:

- ▶ Claimant was told that in computing net profit, her clearing and ticket charges would be deducted from her gross profit, that the ticket charges would be \$10 per ticket and that Claimant would receive 50% of the net amount.
- ▶ Claimant was told that she would immediately have her own machine to trade on.
- ▶ Claimant was told that the firm was going to receive a capital infusion.
- ▶ Claimant was told that she would be able to select and trade approximately 65 stocks.

RELIEF REQUESTED

Claimant requested that an award be entered in her behalf and against Respondents awarding the following:

- actual damages, including, but not limited to, unpaid compensation, in an amount to be proved at the hearing;
- as a penalty, the greater of an amount equal to fifty percent (50%) of such compensation proved to be due or an amount equal to the amount of the wages payable per day not to exceed ten days, allowed pursuant to C.R.S. §8-4-104(3);
- consequential damages, including, but not limited to, relocation expenses incurred by Claimant in relocating from Florida to Denver, Colorado and emotional distress inflicted on her by Respondents in an amount to be proved at the hearing;
- punitive damages pursuant to C.R.S. §13-21-102;
- attorneys' fees as allowed pursuant to C.R.S. §8-4-114; and
- pre-judgment and post-judgment interest, costs and any and all further relief as the Arbitrators deem just and proper under the circumstances.

Respondents requested that the claims asserted against them be denied.

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. All claims asserted against Respondents Smith Benton & Hughes, Inc. and Michael Zaman shall be and hereby are denied in their entirety.
2. Each party shall bear its own costs, expenses and fees, including 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 pre-hearing conference, if any. There were four (4) sessions x \$750 = \$3,000 in forum fees. Pursuant to §10205(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 §10205(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution 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 NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Barbara Hoops-McCormack. Claimant Barbara Hoops-McCormack shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$2,250 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350.

NASD Regulation, Inc. Office of Dispute Resolution shall **retain** postponement fees in the amount of \$750 previously deposited on behalf of Respondents. **Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

/s/ Cletus E. Byrne, Jr.
Cletus E. Byrne, Jr.
Industry Arbitrator, Presiding Chair

Dated: February 20, 1997

/s/ Scott Steinhauer
Scott Steinhauer
Industry Arbitrator

February 20, 1997

/s/ Roger T. Felthoven
Roger T. Felthoven
Industry Arbitrator

February 20, 1997