

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimants

Grace M. Binkley Trust,
F.M. Binkley, Trustee
v.

Arbitration No.
96-02154

Name of Respondent(s)

Smith Benton & Hughes, Inc.
Jon P. Martin
Mike Zaman

REPRESENTATION

For Claimant: F.M. Binkley, Berkeley, California

For Respondents Smith Benton & Hughes, Inc., and Mike Zaman: Douglas Vining, Esq.,
Law Office of Irving Einhorn, Los Angeles, California

Respondent Jon P. Martin represented himself

CASE INFORMATION

Statement of Claim filed: July 18, 1996

Claimant's Submission Agreement signed: May 31, 1996

Joint Statement of Answer and Cross-Claim filed by Respondents Smith Benton & Hughes
and Mike Zaman: August 28, 1996

Jon Martin's Statement of Answer to Claim filed: October 28, 1996

Jon Martin's Cross-Claim against Smith Benton & Hughes filed: October 28, 1996

Smith Benton & Hughes Answer to Jon Martin's Cross-Claim filed: November 29, 1996

Respondents' Submission Agreements signed:

Smith Benton & Hughes:	August 28, 1996
Mike Zaman:	August 28, 1996
Jon Martin:	October 24, 1996

HEARING INFORMATION

The evidentiary hearing was held in San Francisco, California, on October 6, 1997, and lasted one session.

CASE SUMMARY

Claimant alleged Respondent Martin made an unauthorized sale of common stocks in his account and then made an unauthorized purchase of the common stock of Synagro at a time when he was out of town and was not available. Claimant further alleged that when he complained about the unauthorized transactions he never received a response.

Respondents Smith Benton & Hughes and Mike Zaman responded by asserting various affirmative defenses and stating that any damages suffered by Claimant were not caused by them but by Jon Martin. These respondents asserted a cross-claim for indemnity against Jon Martin.

Jon Martin denied the allegations of unauthorized trading stated by Claimant, and stated the Claimant had previously agreed to the sale and purchase that was ultimately effectuated when Claimant was out of town.

Jon Martin responded to the Cross-Claim for indemnity by asserting that it was barred by Claimant's ratification of the trades, by the doctrine of waiver and estoppel, by failure to state a claim for which relief could be granted and by the requirements of California Labor Code Section 2802 and Corporations Code Section 317.

Jon Martin's Cross-Claim for indemnity against Smith Benton & Hughes stated that all actions he took as an independent contractor in buying and selling securities on behalf of clients were within the course and scope of his employment.

Smith Benton & Hughes denied liability under Martin's Cross-Claim, and asserted that under the terms of the independent contractor contract between them, Martin was required to indemnify Smith Benton & Hughes.

RELIEF REQUESTED

Claimant requested damages of \$15,426.25.

Respondents each requested dismissal of Claimant's claims.

OTHER ISSUES

At hearing, all Cross-Claims were withdrawn.

The parties agreed to receive conformed copies of the Award while the original remains on file with NASDR.

AWARD

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

1. All claims asserted against Respondent Mike Zaman are dismissed in their entirety.
2. Respondents Smith Benton & Hughes, Inc., and Jon P. Martin are jointly and severally liable for and shall pay to Claimant the sum of \$3,100 in compensatory damages.
3. The parties shall each bear their respective costs, including attorney's fees.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the NASDR shall retain Claimant's \$100 non-refundable filing fee, but shall refund the \$300 hearing session deposit. The NASDR shall also retain the \$500 non-refundable filing fee paid by Smith Benton & Hughes, but shall retain the \$300 hearing session deposit as an assessment of forum fees for one session. The overpayment of \$300 made by Smith Benton & Hughes shall be refunded.

Robert L. Gorman

Robert L. Gorman

Oct. 14, 1997

Date Served: October 16, 1997