

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimants

Craig P. McGuinn, II  
David Apetz

98-00307

Name of Respondents

James Sheehan  
Shamus Group, Inc.

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**REPRESENTATION**

Claimants Craig P. McGuinn, II ("McGuinn") and David Apetz ("Apetz"), (together "Claimants") appeared pro se.

For Respondents James Sheehan ("Sheehan") and Shamus Group, Inc. ("Shamus"), together "Respondents") appeared Mitchell C. Elman, Esq., from the law offices of Elman & Weiss P.C., located in New York, New York.

**CASE INFORMATION**

Claimants' Statement of Claim was filed on January 26, 1998.

Claimants' Submission Agreement was signed on January 26, 1998.

Respondents' Statement of Answer was filed on August 31, 1998.

Respondents' Submission Agreement was signed on September 15, 1998.

**HEARING INFORMATION**

Pre-Hearing Conference:	July 7, 1998	One Session
	August 17, 1998	One Session

Hearing Date/Sessions:	September 15, 1998	Two Sessions
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The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### CASE SUMMARY

Claimants alleged that the Respondents owe past due commissions to the Claimants as evidenced by the commission breakdown provided by the President of Shamus Group Inc. (Mr. Greg Pollowitz) and exhibited in the original Statement of Claim. The commission breakdown from Shamus' clearing agent, Rauscher Pierce Resnes (now Dain Rauscher) was also provided. Claimants further alleged that no such payment was ever made. Claimants asserted that Respondent Sheehan was not only the Chairman of Shamus, but also the sole General Partner of its parent company Shamus Venture Capital, L.P. Claimants further asserted that Sheehan was directly involved with Shamus at the time the claims arose, and that he was still signing checks and negotiating deals in mid-October 1997. Claimants alleged that, after a rumor about the sale of Shamus was brought to Sheehan's attention by McGuinn, Sheehan specifically said that Shamus was not for sale, and that business would continue as usual.

Claimants asserted that, at the time Shamus sold assets of the company, approximately one hundred thousand dollars was owed to about fifteen registered representatives. Claimants further asserted that two of the registered representatives, Erik Serras and Joseph Nazor, were paid by Shamus, and that the checks were signed by Sheehan on December 9<sup>th</sup> 1997. Claimants alleged that, according to Mr. Pollowitz, then President of Shamus, and the Chase automated phone system, there were ample funds in the Shamus account to pay all employees. Claimants further alleged that no payments were made to the other registered representatives. Claimants asserted that all funds have since been removed from the Shamus account.

Respondents denied Claimants' allegations and asserted that they are not liable for any unpaid sums owed to Claimants. Respondents further asserted that Shamus, the Claimants' employer, was an independent corporate entity, and that Sheehan is not individually liable for the outstanding debts, liabilities, and obligations of Shamus. Further, Respondents alleged that Sheehan was not involved in the day to day operation of Shamus at the time when these claims arose. Respondents maintained that Claimants' allegations that they were not paid their October commissions, payable November 15, 1997, in no way involved Sheehan, as he had no direct involvement with Shamus during that time period. Respondents further maintained that Sheehan signed a power of attorney form allowing Mr. Pollowitz to act as his attorney in fact on October 13, 1997, thus relinquishing his day to day responsibilities to Mr. Pollowitz.

Respondents alleged that, on or about October 16, 1997, all assets and accounts of Shamus were sold to First Metropolitan Securities. Respondents further alleged that said sale occurred prior to the time that the claims arose. Respondents maintained that neither Sheehan nor Shamus are liable for the October 1997 commission payments, or lack thereof, alleged by Claimants.

### RELIEF REQUESTED

Claimants requested compensatory damages in an amount equal to McGuinn's commissions due him in the amount of \$12,923.24 and Apetz's commissions due him in the amount of \$11,081.65, plus interest accruing from November 15, 1997 at the appropriate statutory rate, attorney's fees, costs, fees and expenses of this action, punitive damages in an amount to be determined by the arbitrator, plus such other and further relief as the arbitrator deems just and proper.

Respondents respectfully requested judgment in their favor dismissing the claims and awarding costs including reasonable attorney's fees, and for such other, additional or further relief as the arbitrator may deem just and proper.

### OTHER ISSUES CONSIDERED & DECIDED

The Parties have agreed to receive conformed copies of the Award while the original remains on file with NASD Regulation, Inc.

### 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. Respondents are hereby jointly and severally liable and shall pay McGuinn the sum of \$12,923.24, and shall pay Apetz the sum of \$11,081.65.
2. Respondents are hereby jointly and severally liable and shall pay Claimants the sum of \$500.00 to reimburse Claimants for the filing fee, and the sum of \$300.00 to reimburse Claimants for the hearing session deposit, both previously paid to NASD Regulation, Inc.
3. All other requests are hereby denied.

### FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the arbitrator has determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee paid by the Claimants, and have assessed the following Forum Fees:

2 Pre-hearing conferences x \$300.00	=	\$ 600.00
2 Hearing sessions x \$300.00	=	\$ 600.00
Total Forum Fees	=	\$1,200.00

Respondents are hereby jointly and severally liable for the sum of \$1200.00 representing the total amount of forum fees assessed. Claimants previously paid the sum of \$300.00 to NASD Regulation, Inc., and, therefore, Respondents shall pay the balance of \$900.00 to NASD Regulation, Inc., and shall pay \$300.00 to the Claimants as provided in the "Award" section above.

Fees are payable to NASD Regulation, Inc.

Arbitrator's Signature

Barbara J. Glenns  
Barbara J. Glenns, Esq., Industry Arbitrator

Date of Decision: October 21, 1998

I, Barbara J. Glenns, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Barbara J. Glenns  
Barbara J. Glenns, Esq.