

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Gene and Shirley Morris,
Claimants.

v.

No. 90-01351

Michael Wynn, and
Blunt Ellis & Loewi, Inc.,
Respondents.

REPRESENTATION OF PARTIES

Claimants, Gene and Shirley Morris ("Claimants") were represented by E. Terry Sibbernson, Esq., Omaha, Nebraska.

Respondents Michael Wynn and Blunt Ellis & Loewi, Inc. ("Respondents") were represented by Thomas P. Ward, Esq., of McBride, Baker & Coles, Chicago, Illinois.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about May 14, 1990. Claimants' Submission Agreement was signed on May 9, 1990.

Respondents' Statement of Answer was filed on or about October 8, 1993 and June 4, 1994. The NASD does not have a record of the Respondents having filed a Submission Agreements.

HEARING INFORMATION

Hearing date: June 20, 1994. Two (2) sessions.
Hearing Location: Omaha, Nebraska

CASE SUMMARY

In their Statement of Claim, Claimants alleged that Respondents Michael Wynn ("Wynn") and Blunt, Ellis & Loewi, Inc., n/k/a Kemper Securities Group: Churned their account; placed Claimants funds into unsuitable investments; and made unauthorized trades. The allegations arose out of transactions in the following stocks and bonds purchased between 1980 and 1985: National Distribution; Wendy's International; Apache Corporation; Commonwealth Edison; General Dynamics; Dehelcor, Inc.; SID Bonds-Lancaster County; Lee Data Corporation; Data Point Corporation; and United Central Bank.

In its Answer, Kemper asserted that the claim was ineligible for submission pursuant to Section 15 of the NASD Code of Arbitration Procedure (the "Code") as well as barred by applicable statutes of limitation.

RELIEF REQUESTED

Claimants requested an award against the Respondents for monetary damages in the amount of \$100,000.00.

Respondent Kemper requested that the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

On or about October 8, 1993, Kemper filed a request for a determination by the Director of Arbitration that the Submission by the Claimants made in May 1990 was ineligible for arbitration under Section 15 of the Code. After considering the request, the Claimants' response, the Director denied Kemper's request.

On or about June 4, 1994, Respondents filed a Motion for Prehearing Conference and Determination of Eligibility. On June 20, 1994, the undersigned arbitrators heard argument on the motion from the parties' counsel. After deliberation, the arbitrators determined that Respondents' motion would be taken under advisement.

On June 20, 1994, at the close of Claimants' case, Respondents renewed their Motion to Dismiss. After hearing argument from the parties' counsel, and deliberation, the panel granted Respondents' motion.

Respondents did not file with the NASD properly executed Submissions to Arbitration but are required to submit to arbitration pursuant to Section 12 of the Code, and having answered the claim, appeared at the hearing, and therefore, are bound by the determination of the panel on all issues submitted.

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. Claimants claims are, and each of them, denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs associated with this arbitration, including attorneys' fees, except as set forth more fully below.

FORUM FEES

Pursuant to Section 43(c) of the Code, the following forum fees are assessed:

2 hearing sessions @ \$500.00 per session = \$1,000.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the initial fee in the amount of \$500.00, previously paid to the NASD by the Claimants.

Additional Forum Fees in the amount of \$500.00 are assessed against the Claimants.

Fees are payable to the National Association of Securities Dealers, Inc.

CONCURRING ARBITRATORS

Dated:

Name:

July 6, 1994

John P. Miller/s/
John P. Miller
Presiding Chair
Public Arbitrator

June 24, 1994

Richard M. Duxbury/s/
Richard M. Duxbury
Public Arbitrator

June 27, 1994

Michael A. Rzewnicki/s/
Michael A. Rzewnicki
Industry Arbitrator

Date of Service by the NASD: 7-22-94