

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Melvin Schwartz)

Name of Respondent(s))

Roy Warren)

Kemper Securities Group, Inc)

Gulfstream Financial Associates)

Case No. 91-01469

REPRESENTATION

For Claimant, Melvin Schwartz ("Schwartz"): William Doyle, Esq. of William P. Doyle, P.A.

For Respondents, Kemper Securities Group, Inc. ("Kemper") and Gulfstream Financial Associates ("Gulfstream"): Ronald Shindler, Esq. of Fowler, White, Burnett, et al.

For Respondent, Roy Warren ("Warren"): Michael McAllister, Esq. of Lane & Mittendorf.

CASE INFORMATION

Statement of Claim filed: May 5, 1991. Claimant's Submission Agreement signed: April 23, 1991.

Respondents' Kemper and Gulfstream's, Statement of Answer filed: July 19, 1991. Respondents' Submission Agreement signed: June 7, 1991 by Arthur McGivern on behalf of Kemper & Gulfstream.

Respondent, Warren's, Statement of Answer filed: July 18, 1991. Respondent, Warren's, Submission Agreement signed: July 19, 1991.

HEARING INFORMATION

On March 3, 4, 1992 and July 20, 21, 1992, in Fort Lauderdale, Florida, hearings lasting eight (8) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for: fraud and misrepresentation; violation of Rule 10b-5 of the Securities Exchange Act; violation of Chapter 517 of the Florida Statutes; and, violation of Sections

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15 and 17 of the Securities Exchange Acts of 1933 and 1934. Claimant alleged that Warren misrepresented the safety of investing in a certain mutual fund and that said mutual fund was unsuitable for Claimant.

Respondent denied all allegations of wrongdoing and alleged: Claimant wanted aggressive income; Claimant was kept informed of his account's status; all trades were authorized and discussed with Claimant; and Claimant was aware of the risks involved. Respondents, Kemper and Gulfstream, asserted affirmative defenses of: failure to state a claim; assumption of risk; market conditions caused Claimant's losses; Claimant approved all transactions; ratification; waiver; estoppel; laches; Claimant's negligence caused the losses; statute of limitations; lack of reliance; failure to mitigate damages; and, Gulfstream did not breach any fiduciary duty.

RELIEF REQUESTED

Claimant requested damages in excess of \$139,000.00, plus costs, interest, dividends which could have been earned and attorney's fees.

Respondents, Kemper and Gulfstream, requested dismissal of the claim plus costs.

Respondent, Warren, requested dismissal of the claim.

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 originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, and post hearing submissions, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Kemper, Gulfstream and Warren, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$24,300.00, plus interest in the amount of \$7,533.00, for a total due to the Claimant of \$31,833.00.
2. Claimant's request for attorney's fees and costs is denied.
3. Respondents, Kemper and Gulfstream's, request for costs is denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

91-01469 Award:

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$6,000.00, (eight sessions x \$750.00 per session).
2. Claimant is hereby assessed \$3,000.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction of such fees.
3. Respondents, Kemper, Gulfstream and Warren, are hereby assessed \$3,000.00 jointly and severally, payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

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

Concurring Arbitrators' Signatures

/s/
Casey W. Mills, Esq.

Public

/s/
Leon J. Steiner

Industry

/s/
Bonnie L. Roddenberry, Esq.

Public

Date of Decision: August 31, 1992