

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Gerald & Lois Ahrens

91-02185

Name of Respondents

Durk Davan
Boettcher & Company

REPRESENTATION OF PARTIES

Claimants appeared pro se.

Respondents were represented by William D. Nelson, Esq. of Robinson Waters O'Dorisio & Rapson, Denver, CO.

CASE INFORMATION

The Statement of Claim was filed on or about July 17, 1991.

Claimant's Submission Agreement signed on July 11, 1991.

Statement of Answer filed by Respondents on or about September 5, 1991.
Amended Statement of Answer filed on or about November 25, 1991.

Respondent Boettcher & Company, a division of Kemper Securities Group, Inc.'s Submission Agreement signed on September 4, 1991 by William D. Nelson.

HEARING INFORMATION

The hearing was held on Monday, March 3, 1992 for two (2) sessions and Tuesday, April 28, 1992 for two (2) sessions in Denver, Colorado for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that they were retired conservative investors, unsophisticated and uneducated. They further allege that Respondent Durk Davan misrepresented or failed to disclose material facts in connection with their investments in Kemper Municipal Bond Fund; IPI Option Income Fund; IPI Government Securities Fund; Mesa Ltd.; NRM \$2 pfd; Storage Technology; NRM/Edisto \$2.60 pfd; and Kemper Unit Investment Trust Series 39.

Respondents denied the allegations set forth in the Statements of Claim.

Respondents specifically stated that the Claimants were business people who had sold a successful business and entered successful second careers. Respondents stated that the investments were suitable for the Claimants and consistent with their investment objectives. Respondents also asserted the following affirmative defenses: Claimants fail to state a claim upon which relief can be granted; the claims are barred by the applicable statutes of limitations, the doctrines of estoppel, waiver and acquiescence; failure to mitigate; the Claimant's reliance on the alleged misrepresentations was unreasonable; and the damages were not proximately caused by any act or omission of Respondents.

RELIEF REQUESTED

Claimants requested an award in the amount of \$62,491.00 in compensatory damages, \$187,473.00 in punitive damages and interest.

Respondents requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Dunk Davan did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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. The Statement of Claims shall be and hereby is dismissed and denied in its entirety.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant. Claimants shall pay to the NASD the sum of \$750.00 and Respondents shall pay to the NASD the sum of \$1,500.00 as forum fees.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any.

The NASD shall retain postponement fees previously deposited with the NASD by the parties, if any.

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

Dated:

May 11, 1992

s/s Robert W. Smedley, Esq.
Presiding Chair
Public Arbitrator

May 4, 1992

Kenneth C. Wolfe, Esq.
Public Arbitrator

May 5, 1992

Norbert J. Samford
Industry Arbitrator

NASD decision rendered: May 14, 1992