

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ronald D. Van

91-03839

Name of Respondents

Bateman Eichler, Hill Richards, Inc.
Kemper Securities Group
Daniel P. Litt

REPRESENTATION

For Claimant Ronald D. Van ("Claimant"): Anthony Horn, Attorney at Law.

For Respondents Bateman Eichler, Hill Richards, Inc. ("Bateman Eichler" or "Bateman") and Kemper Securities Group ("Kemper"): A. Brad Busscher, Vice President and Senior Attorney, Bateman Eichler.

Daniel P. Litt ("Litt") did not attend and was not represented.

CASE INFORMATION

Statement of Claim filed: December 4, 1991.

Claimant's Submission Agreement signed on: November 25, 1991.

Joint Statement of Answer filed by Respondents Bateman Eichler and Kemper on: March 11, 1992.

Respondents' Submission Agreement signed on: March 10, 1992.

Respondent Litt did not submit an answer nor did he submit an executed Submission Agreement and there is no evidence that he was ever properly served with the Statement of Claim in this matter.

HEARING INFORMATION

Hearing Dates/Sessions: September 21, 1992 - two sessions
September 22, 1992 - two sessions

Hearing Location: Boston, MA.

CASE SUMMARY

Claimant alleged that on February 1, 1988 he opened a commodities account with Bateman Eichler a subsidiary of Kemper. Claimant alleged that he opened a discretionary account with Litt, his broker, and Bateman Eichler. Claimant alleged that in two and a half months his commodities account lost over \$45,000. Claimant alleged that Respondents Bateman Eichler, Kemper and Litt (hereinafter referred to collectively as "Respondents") engaged in a pattern of speculation and excessive trading of commodities futures in Claimant's account. Claimant alleged that Respondents defrauded him by sending Claimant materials that contained numerous misrepresentations and omissions of material fact which Claimant relied upon and induced him into investing in Bateman's commodities program. Claimant alleged that Respondents breached their fiduciary duty that they owed to Claimant. Claimant alleged that Respondents transacted excessive trades in his account. Claimant alleged that Respondents negligently handled Claimant's account and that they breached an expressed and/or implied contract to deal with Claimant fairly. Claimant alleged that each Respondent is liable for the acts and inactions of each of the other under principles of respondeat superior. Claimant alleged that the commodities trading program was unsuitable for Claimant.

Bateman Eichler and Kemper denied each and every allegation of wrongdoing asserted by the Claimant. Bateman Eichler and Kemper maintained that Claimant signed all documents including one that indicated that Claimant would hold Bateman Eichler and Kemper harmless for all trading losses suffered. Bateman Eichler and Kemper maintained that Claimant failed to assert any claim against them for approximately four years and therefore, Claimant's claim is barred by the applicable statute of limitations. Bateman and Kemper maintained that Claimant place his account solely in the hands of Visioneering Research and Development Company ("Visioneering") and gave Visioneering discretionary trading authority over his account. Bateman and Kemper maintained that they did not defraud the Claimant. Bateman and Kemper maintained that they neither breached their fiduciary duty to the Claimant nor did they act negligently in their handling of Claimant's account. Bateman and Kemper maintained that the Respondents, including Litt, had no control over trading commodities in Claimant's account. Bateman and Kemper maintained that they did not breach any expressed or implied contract owed to the Claimant and that they properly supervised Litt with respect to Claimant's account. Bateman and Kemper maintained that Claimant was suitable to invest in commodities.

RELIEF REQUESTED

Claimant requested compensatory damages of \$45,905.86 together with interest from the date of the transactions to the date of the hearing, plus punitive damages and attorney's fees and costs.

Respondents Bateman Eichler and Kemper requested that Claimant's claim be

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dismissed in its entirety and that they be awarded their reasonable costs and attorney's fees for their defense of this matter.

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.

The Panel determined that it did not have jurisdiction over Respondent Litt as there was no proof that he was properly served with this claim.

NASD

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. That Respondent Bateman Eichler is liable to the Claimant and shall pay to the Claimant the sum of TEN THOUSAND AND 00/100 DOLLARS (\$10,000); inclusive of interest.
2. That the parties shall bear their respective costs, including attorney's fees.
3. That all other claims are denied in their entirety.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

That forum fees for the 4 hearing sessions shall be shared equally by Claimant and Respondents. Claimant is assessed forum fees in the amount of (2 hearing sessions x \$400 = \$800) however, he is entitled to offset this amount with his hearing session of \$400 previously filed so that the amount due from the Claimant is \$400. Respondents are jointly and severally assessed forum fees in the amount of \$800.

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

Concurring Arbitrator's Signature:
Name

Public/Industry


Daniel B. Mann

Industry Arbitrator

dismissed in its entirety and that they be awarded their reasonable costs and attorney's fees for their defense of this matter.

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.

The Panel determined that it did not have jurisdiction over Respondent List as there was no proof that he was properly served with this claim.

ANNALS

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. That Respondent Bateman Eichler is liable to the Claimant and shall pay to the Claimant the sum of TEN THOUSAND AND 00/100 DOLLARS (\$10,000); inclusive of interest.
2. That the parties shall bear their respective costs, including attorney's fees.
3. That all other claims are denied in their entirety.

FORUM PERS

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

That forum fees for the 4 hearing sessions shall be shared equally by Claimant and Respondents. Claimant is assessed forum fees in the amount of (2 hearing sessions x \$400 = \$800) however, he is entitled to offset this amount with his hearing session of \$400 previously filed so that the amount due from the Claimant is \$400. Respondents are jointly and severally assessed forum fees in the amount of \$800.

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

Concurring Arbitrator's Signature:
Name

Public/Industry

David Love, Esq. / Chairman

Public Arbitrator

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dismissed in its entirety and that they be awarded their reasonable costs and attorney's fees for their defense of this matter.

ORDER ISSUES CONFIRMED & RECORDED

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 confirmed copies of the Award while the originals remain on file with the NASD.

The Panel determined that it did not have jurisdiction over Respondent Litt as there was no proof that he was properly served with this claim.

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. That Respondent Satchen Eichler is liable to the Claimant and shall pay to the Claimant the sum of TEN THOUSAND AND 00/100 DOLLARS (\$10,000); inclusive of interest.
2. That the parties shall bear their respective costs, including attorney's fees.
3. That all other claims are denied in their entirety.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

That forum fees for the 4 hearing sessions shall be shared equally by Claimant and Respondents. Claimant is assessed forum fees in the amount of (2 hearing sessions x \$400 = \$800) however, he is entitled to offset this amount with his hearing session of \$400 previously filed so that the amount due from the Claimant is \$400. Respondents are jointly and severally assessed forum fees in the amount of \$800.

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

Concurring Arbitrator's Signature:
Name

Public/Industry

Peter M. Saporoff
Peter M. Saporoff

Public Arbitrator