

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

First City, Texas

Claimant

Case #92-00403

Award

vs.

Kemper Securities Group, Inc., and
Selina M. MoriartyRespondents

Case Summary

In a claim filed with the National Association of Securities Dealers, Inc., on February 3, 1992, claimant FIRST CITY, TEXAS, by and through Dennis Hansen, Assistant Vice President and Trust Officer, made the following allegations, complaining about SELINA M. MORIARTY and KEMPER SECURITIES GROUP, INC., the respondents:

That on August 15, 1991, a FIRST CITY employee called respondent MORIARTY, an account executive with respondent KEMPER SECURITIES GROUP, INC., to inquire about the proceeds of a certificate of deposit which had matured on August 12, 1991;

That following the telephone call MORIARTY erroneously sold on August 15, 1991, a certificate of deposit belonging to FIRST CITY without the knowledge or consent of FIRST CITY;

That the error was a result of the respondents' not knowing their customer;

That the error was a result of the respondents' not implementing standard basic steps to insure that they were dealing with a person authorized to place orders for FIRST CITY;

That the respondents further marked down the certificate of deposit excessively, causing a principal loss for FIRST CITY; and

That the actions of the respondents caused a substantial loss of principal and interest income for FIRST CITY.

Respondents KEMPER SECURITIES GROUP INC., and SELINA M. MORIARTY, by and through in-house counsel A. Brad Busscher, made the following response:

That the August 12, 1991, call from the FIRST CITY employee included an instruction to MORIARTY to redeem a certificate of deposit;

That the caller gave MORIARTY an account number that she could not locate;

That the caller gave MORIARTY a second account number for the second certificate of deposit and that this second certificate was redeemed as requested;

That MORIARTY called FIRST CITY to inform the employee that MORIARTY did not have a very good bid for the second certificate of deposit and that the employee said "Let's sell this baby";

That based on the employee's instructions MORIARTY sold the second certificate of deposit;

That the employee called back that same day leaving a message for MORIARTY and discussing "closing an account";

That the claimant made no reference to canceling a trade at the time of the employee's call;

That not until September 25, 1991, did KEMPER learn that the employee had been looking for the proceeds of the first certificate of deposit at the time of the first call and that the employee was not trying to redeem a certificate; and

That the damages from the erroneous sale of the second certificate of deposit are a direct result of the actions of the FIRST CITY employee, not the result of any wrongful conduct on the part of the respondents.

Relief Requested

Claimant FIRST CITY, TEXAS, requested \$1,485 in actual damages plus \$5,346 representing the incremental interest lost.

Respondents KEMPER SECURITIES GROUP, INC., and SELINA M. MORIARTY requested that the claim be dismissed and that they be awarded all costs and expenses, including attorney fees.

Award

Under the provisions of section 13 of the National Association of Securities Dealers, Inc., Code of Arbitration Procedure, a single public arbitrator, MARTHA FAILING, was selected to review and determine the matter in controversy between the parties set forth in submissions to arbitration signed by the claimant on January 28, 1992, and by the respondents on May 1, 1992.

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The arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of claimant FIRST CITY, TEXAS, against respondents KEMPER SECURITIES GROUP, INC., and SELINA M. MORIARTY are dismissed.
2. The parties shall bear their respective costs, including attorney fees.
3. The \$150 filing fee previously deposited with the National Association of Securities Dealers, Inc., by claimant FIRST CITY, TEXAS, shall be retained by the NASD, Inc.

Affirmation

I MARTHA FAILING affirm on my oath as arbitrator that I am the individual described as arbitrator in this award, that I signed my oath, and that I signed this instrument which is my award.



Martha Failing

Date of decision: August 13, 1992