

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Sidney N. Buka

and

92-01200

Name of Respondents

Boettcher & Company, a division of  
Kemper Securities Group, Inc. and Terry Sharp

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REPRESENTATION OF PARTIES

Claimant Sidney N. Buka was represented by Michael W. Lillie, Esq., Englewood, Colorado.

Respondents were represented by A. Brad Busscher, Esq. of Boettcher & Company, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about April 3, 1992. Claimant's Submission Agreement was signed on March 19, 1992.

Statement of Answer was filed on behalf of Respondents Boettcher & Company, a division of Kemper Securities Group, Inc. and Terry Sharp on or about June 12, 1992. Respondent Boettcher & Company, a division of Kemper Securities Group, Inc.'s Submission Agreement was signed on June 10, 1992 by Janet L. Reali, Esq. Respondent Terry Sharp's Submission Agreement was signed on May 11, 1992.

HEARING INFORMATION

The hearing was held on Friday, November 13, 1992 in Denver, Colorado for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that the recommendations made by Respondent Sharp were inappropriate and dictated by matters other than the claimant's best interests. Claimant specifically alleged that the Respondents violated Section 10b of the Securities Exchange Act of 1934, engaged in fraud and deceit, that respondent's actions amounted to intentional infliction of emotional harm, and amounted to negligent misrepresentation.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that Mr. Sharp spent a considerable

amount of time analyzing the claimant's portfolio in light of his stated investment objective for increased income. After this review, the claimant was presented with several proposals. Respondents further stated that after considering his various alternatives for approximately nine months, the claimant rejected all of the recommendations with the exception of the Kemper High Yield Fund. Respondents finally state that the purchase of Furrs was an unsolicited transaction.

#### RELIEF REQUESTED

Claimant requested an award of damages totaling \$103,000.00, in addition to unspecified commissions. Claimant specifically requested an award of \$3,000.00 for losses on kemper High Yield Fund, \$25,000.00 for losses on Furr's/Bishop's Cafeterias, \$10,000.00 for loss of earnings on investments, \$5,000.00 in interest on the above stated losses, \$10,000.00 for attorney's fees, and \$50,000.00 in punitive damages.

Respondents requested that the claims be dismissed and that they be awarded the sum of \$630.94 plus interest, attorney's fees and costs.

#### 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 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 claims asserted herein by the Claimant Sidney N. Buka shall be and hereby are dismissed in their entirety.
2. Claimant Sidney N. Buka shall be and hereby is liable for and shall pay to the Respondent Boettcher & Company, a division of Kemper Securities Group, Inc. the sum of \$630.94 (six hundred thirty dollars and ninety four cents).
3. Interest at the rate of 8% per annum is awarded on the sum stated in paragraph two (2) above from and inclusive of June 12, 1990 to and inclusive of the

Award 92-01200

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date this award is paid in full.

4. 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 \$150.00 and shall retain the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant. Respondent Boettcher & Company shall pay to the NASD the sum of \$500.00 as forum fees.

Forum fees are calculated at the rate of \$500.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

11-20-92

  
Donald P. Shwayder, Esq.  
Presiding Chair  
Public Arbitrator

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John H. Barton  
Public Arbitrator

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Dennis Dowd  
Industry Arbitrator

date this award is paid in full.

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Dated:

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Donald P. Shwayder, Esq.  
Presiding Chair  
Public Arbitrator

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Dated:

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Donald P. Shwayder, Esq.  
Presiding Chair  
Public Arbitrator

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John H. Barton  
Public Arbitrator

19 November 1992

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Dennis Dowd  
Industry Arbitrator