

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Peter P. Tornatore

No. 92-01726

Name of Respondent

Blunt Ellis & Lowei, Inc./
Kemper Securities, Inc.

REPRESENTATION OF PARTIES

Peter P. Tornatore appeared pro se.

For Respondent: Robert S. Steigerwald, Esq., Kemper Securities, Inc., Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: May 22, 1992.

Claimants' Submission Agreement signed on: July 14, 1992.

Statement of Answer filed by Respondent, Blunt Ellis & Lowei, Inc./Kemper Securities, Inc.
on or about: September 22, 1992.

Respondent Blunt Ellis & Lowei, Inc.'s Submission Agreement signed on: September 22, 1992.

HEARING INFORMATION

Hearing date: February 18, 1992. Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant, Peter P. Tornatore ("Claimant") alleged that on January 25, 1991, he had a total of 94 call options of Baxter stock in his account with Respondent Blunt Ellis & Lowei, Inc./Kemper Securities, Inc. ("Respondent"). Claimant alleged that he had been in contact with his broker constantly during the period of January 5, 1991 through May 17, 1991. Claimant alleged having told the broker that if there was any question that he would loose his 9400 shares to contact the Claimant so that he could buy them back. Claimant further alleged that on May 17, 1991, he had contacted his broker and told him that the options may be called, and that they should do something because the option had been trading above the strike price of \$30.00. Claimant alleged having learned of the sale on May 22, 1991 after receiving a confirmation from Respondent. The confirmation showed a trade date of May 20, 1991, and not May 17 or the expiration date of May 18, 1991. Claimant next stated that in December of 1991, he had a meeting with Respondent's local manager. Claimant alleged that Respondent has not corrected the situation with the Baxter calls.

In its Answer, Respondent denied each and every material allegation contained in the Statement of Claim. In addition, Respondent asserted the following affirmative defenses:

1. Claimant failed to state a claim for which any relief may be awarded.
2. Claimant is not entitled to rescind the sale of his Baxter stock, for which he has received more than \$280,000.00.
3. Claimant's alleged damages are speculative and were not caused by Respondent.
4. Claimant's alleged claim is barred by laches, estoppel, ratification, waiver and the failure to mitigate damages.
5. There is no basis for the Claimant's request for punitive damages.

RELIEF REQUESTED

Claimant requested that the dispute be rescinded as of May 18, 1991 at the point he could have bought back the 9400 shares at \$29,375.00, plus punitive damages, if allowed.

Respondent requested that this arbitration be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing held on February 18, 1993, Respondent made a Motion to Bar Claimant from presenting any additional documents other than the exhibits attached to the Statement of Claim. After hearing argument from the parties, and deliberation, the panel denied the Motion.

The parties have agreed that the Award in this matter may be executed by 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Blunt Ellis & Lowei, Inc., n/k/a Kemper securities, Inc. is liable for, and shall pay to Claimant, Peter P. Tornatore the sum of \$5,000.00 as satisfaction for his claims herein.
2. Claimant, Peter P. Tornatore's claim for punitive damages is hereby denied and dismissed with prejudice.

OTHER COSTS

3. Each party shall pay its own costs of this arbitration, including attorneys' fees, except as set forth more fully below.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

2 hearing sessions X \$400.00 = \$800.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$250.00, and shall retain \$400.00 of the 600.00 hearing session deposit previously paid to the NASD by the Claimant. The remaining \$200.00 shall be refunded to the Claimant.

Additional forum fees in the amount of \$400.00 are assessed against the Respondent.

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

CONCURRING ARBITRATORS

Dated:

March 11, 1993

/s/Jacques F. Heilingoetter, Jr.
Jacques F. Heilingoetter, Jr.
Presiding Chair
Public Arbitrator

March 12, 1993

/s/Bruce J. Simpson
Bruce J. Simpson
Public Arbitrator

March 12, 1993

/s/Frederic M. Rizzo
Frederic M. Rizzo
Industry Arbitrator

Date of Service by the NASD:

March 18, 1993