

**N.A.S.D. ORDER**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

**Name of Claimant(s)**

Edward I. & Beatrice J. Kallins

NASD Arbitration  
No. 92-02689

**Name of Respondent(s)**

NCNB Securities, Inc.  
Gary Werner

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**REPRESENTATION**

For Claimant: Alvin J. Schifrin, Esq., Mill Valley, California

For Respondent: George C. Covington, Esq., Kennedy Covington Lobdell & Hickman,  
Charlotte, North Carolina

**CASE INFORMATION**

Statement of Claim filed: August 10, 1992

Amended Statement of Claim filed: February 2, 1993

Claimant's Submission Agreement signed: August, 1992

Statements of Answer filed:

NCNB Securities (now known as NationsBanc Securities): October 28, 1992

Gary Werner: April 20, 1993

Respondents' Submission Agreements signed:

NationsBanc Securities: October 22, 1992

Gary Werner: April 2, 1993

### **HEARING INFORMATION**

Pre-hearing telephone conference dates / sessions:

May 21, 1993	-	1 session
June 25, 1993	-	1 session

Hearing dates / sessions:

May 26, 1993	-	1 session
August 26, 1993	-	2 sessions
August 27, 1993	-	2 sessions

Hearing Location: San Francisco, California

### **CASE SUMMARY**

Claimants alleged unsuitability, negligent misrepresentation, fraud, failure to supervise, failure to disclose, breach of fiduciary duty, sale of securities in a state in which the broker was not licensed, professional malpractice and breach of the covenant of good faith and fair dealing. These allegations arose out of Claimants' investment in a GNMA and the use of margin in their account.

Respondents each denied all allegations of wrongdoing. NationsBanc denied any liability based on the fact that neither it nor anyone acting on its behalf was involved in the sale of the GNMA to the Claimants. Both Respondents asserted affirmative defenses of ratification, estoppel, waiver, failure to mitigate damages, and applicable statutes of limitations.

### **RELIEF REQUESTED**

Claimants requested damages of at least \$100,000.00, plus exemplary damages, costs of arbitration and attorney's fees.

Respondents each requested dismissal of all claims, and an award of costs of arbitration and attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Order in this matter may be executed in either counterpart copies or that a handwritten, signed Order may be entered. In either case, the parties have agreed to receive conformed copies of the Order while the originals remains on file with the NASD.

At the conclusion of the presentation of Claimants' case, Respondents moved for a directed verdict on all causes of action. The undersigned arbitrators granted the motion on all causes of action.

The panel further directed that the parties each shall bear their respective costs and attorneys fees, and pay forum fees as follows:

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the forum fees are to be split between the parties.

Total assessed fees:		
2 pre-hearing conferences @ \$300/session	=	\$600.00
4 hearing sessions @ \$500/session	=	\$2,000.00
Claimants' one-half share	=	\$1,300.00
Credit for deposit	=	\$500.00
Balance due	=	<u>\$800.00</u>
Respondents' one-half share		<u>\$1,300.00</u>

Fees are payable to the NASD, Inc.

#### **ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
John O. Blevins, Jr.	Public Chairperson
Martin Karp	Public Panelist
Frank Weaver	Industry Panelist

Date Served: 10/05/93