

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Richard and Martha Blair

93-00062

Name of Respondents

Kemper Securities, Inc.:
Suzanne I. Burleson;
Arneson, Kercheville, Ehrenberg & Associates

REPRESENTATION

For Claimants: Richard Blair and Martha Blair ("Blair") were represented by Bruce Bigelow, Esq. of Blazier, Rutland & Lerner, P.C., located in Austin, Texas.

For Respondents: Kemper Securities Inc. ("Kemper") was represented by A. Brad Busscher, Esq. of Kemper Securities Inc., Chicago, Illinois.

Suzanne I. Burleson ("Burleson") was represented by A. Brad Busscher, Esq. of Kemper Securities, Inc., Chicago, Illinois, and Donald J. O'Bell, Esq. of Austin, Texas.

Arneson, Kercheville, Ehrenberg & Associates ("Arneson") was represented by John E. Easterling, of Arneson, Kercheville, Ehrenberg & Associates, San Antonio, Texas.

CASE INFORMATION

Statement of Claim filed: January 7, 1993.

Claimants' Submission Agreement signed on: November 6, 1992.

Statement of Answer filed by Respondents Kemper and Burleson on: April 14, 1993.

Respondent Kemper's Submission Agreement signed on: April 14, 1993 by A. Brad Busscher, Vice President and Senior Attorney, Kemper Securities, Inc.

Claimants' Amended Statement of Claim and Addition of Respondent filed on: July 16, 1993.
Statement of Answer by Respondent Burleson pertaining to the claims being made prior to Burleson's affiliation with Kemper filed on: August 9, 1993.
Respondent Burleson's Submission Agreement signed on: April 6, 1993.

Statement of Answer filed by Respondent Arneson on: August 19, 1993.
Respondent Arneson did not file an executed Submission Agreement.

Respondent Arneson's Motion to Dismiss filed on: August 26, 1993.
Claimants' Response to Motion to Dismiss filed on: September 17, 1993.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: October 27, 1993 for Two (2) sessions; and
October 28, 1993 for Two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimants alleged that Respondent Burleson, while employed by or acting as an agent for Respondents Arneson and Kemper, purchased securities for their accounts which were unsuitable and lacked diversification, and engaged in trading to generate commission income rather than pursue the Blairs' investment goals. The Blairs alleged that:

1. In 1986, Mr. Blair's employment involved significant travel and the Blairs needed the assistance of an experienced financial analyst to help manage their investments. When the Blairs retained Burleson, they explained that they wanted a conservative investment strategy in stocks and bonds, that their assets were needed for their retirement, and that they did not have significant income or net worth;
2. Burleson exercised total discretion over the accounts, bought and sold securities without obtaining prior approval, and never followed the Blairs' requested for conservative investments, instead purchasing speculative investments for their accounts. When the Blairs noticed losses in the account, Burleson would assure the Blairs that their assets would increase in value and that it was just a temporary slow down in the market;

3. The Blairs were interested in blue chip stock or Standard and Poor's Top 500 stocks. Instead, Burleson invested their funds in small and under capitalized companies. In addition, the purchase of a significant investment in First Seismic Corp. for the Blairs' portfolio indicated a lack of diversification; and
4. The Respondent firms failed to supervise Burleson, or were grossly negligent in their supervision.

Based upon these allegations, the Blairs asserted causes of action for breach of contract, breach of fiduciary duty, breach of the duty of good faith and fair dealing, negligent or intentional misrepresentations, deceptive trade practices and/or fraud and "emotional" damages.

Respondents Kemper and Burleson denied the material allegations of the Claim, alleging that:

1. The bulk of the securities held in the Blairs' Kemper accounts transferred into Kemper with Burleson when she left Arneson in September of 1991. There were minimal transactions in the accounts while at Kemper and the transactions at Kemper produced a realized profit of approximately \$2,000.00;
2. In the Blairs' initial conversations with Burleson, they affirmed that their investment objective was capital appreciation and that they could accept a degree of risk because this was not the only monies they had available. In addition, Mr. Blair stated that they would like to buy securities in which they could take advantage of trading swings rather than purchasing securities for long-term appreciation or dividends;
3. Throughout the time that Burleson handled the Blairs' accounts at Kemper, the Claimants were kept fully informed of all matters involving their accounts through trade confirmations and monthly statements. In addition, Burleson had numerous conversations with the Blairs and regularly sent them copies of 10-Q's, 10-K's, press releases and related industry stories on the positions they owned.

Kemper and Burleson asserted the following affirmative defenses:

1. The claims were barred by the doctrines of laches, estoppel, ratification and the applicable statute of limitations, as well as Section 15 of the NASD Code of Arbitration Procedure;
2. The Claimants suffered no damages while the account was at Kemper;
3. Any losses in the Claimants' account were the result of the Claimants' contributory and/or comparative negligence;

4. The Claimants have waived any cause of action because of their consistent pattern of trading over the course of several years;
5. The Statement of Claim fails to state a claim upon which relief can be granted;
6. Kemper is not responsible for any securities purchased while the Blairs' accounts were with another broker/dealer;
7. The Claimants have failed to properly assert a churning claim;
8. The securities purchased were suitable and met the Claimants' objectives; and
9. The Claimants have failed to state a claim for "emotional" damages.

Respondent Burleson, in response to the claims being made prior to her affiliation with Kemper, denied the material allegations of the Statement of Claim and incorporated the Answer filed by Respondent Kemper. In addition, Burleson asserted the same affirmative defenses made by Kemper above.

Respondent Arneson denied the material allegations of the Statement of Claim, alleging that:

1. During the period that Burleson was with Arneson, the Blairs' accounts realized a profit;
2. The trading conducted while Burleson was at Arneson was specifically directed by the Blairs, was not excessive or unnecessary, and was not unreasonably speculative or outside the investment goals of the Blairs; and
3. The applicable statutes of limitations bar the Blairs' claims against Arneson as Respondent has not had contact with the accounts or supervisory authority over Burleson since August of 1991.

RELIEF REQUESTED

Claimants requested entry of an award against Respondents for lost profits of approximately \$25,000.00, lost principal balance in the amount of \$50,000.00, and attorneys' fees.

Respondent Kemper and Burleson requested that the claims be dismissed and that the Panel award them all costs and expenses, including attorneys' fees, incurred in defending the matter.

Respondent Arneson requested that the Panel enter an award that the Claimants take nothing on

their claim against Arneson. that Arneson be awarded all attorneys' fees and costs, and for such other relief that Arneson was able to show itself entitled.

OTHER ISSUES CONSIDERED & DECIDED

The Panel, after review of the Motion to Dismiss filed by Respondent Arneson and the Reply filed by Claimants, determined that the Motion to Dismiss would be denied.

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.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Suzanne I. Burleson is liable for and shall pay to Claimants Richard Blair and Martha Blair the sum of \$20,673.81 in actual damages;
2. In addition, Respondent Suzanne I. Burleson is liable for and shall pay to the Claimants, Richard Blair and Martha Blair, the sum of \$22,887.92 as attorneys' fees. In making this award of attorneys' fees, the panel considered the arguments of the parties and the authorities presented in the parties post-hearing submissions, and determined that authority existed for an award of attorneys' fees to the Claimants;
3. The claims asserted against Respondents Kemper Securities, Inc. and Arneson, Kercheville, Ehrenberg & Associates are hereby dismissed and denied in their entirety;
4. The parties shall bear their own costs of arbitration, including any remaining attorneys' fees, except for those specifically enumerated herein; and
5. All relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) Hearing sessions x \$400.00 per hearing session = \$1,600.00.

The National Association of Securities Dealers, Inc. shall retain the \$120.00 claim filing fee and refund the \$400.00 hearing session deposit previously filed by the Claimants, Richard Blair and Martha Blair. Respondent Suzanne I. Burleson is liable for and shall pay to the NASD forum fees in the sum of \$1,600.00.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Gordon W. Hall, Esq.
Gordon W. Hall, Esq.
Public Arbitrator
Chairperson

March 5, 1994

/s/ Richard A. Hollenberg
Richard A. Hollenberg
Public Arbitrator

March 7, 1994

/s/ Robin S. Novak
Robin S. Novak
Industry Arbitrator

March 7, 1994

For NASD Use Only

Date of Service of Award: 3-7-94