

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Marty Wynne Murphy

93-00989

Name of Respondent

Kemper Securities, Inc.

REPRESENTATION

For Claimant: Marty Wynne Murphy ("Murphy") was represented by Barrett W. Stetson, Esq. of Dallas, Texas.

For Respondent: Kemper Securities, Inc. ("Kemper") was represented by Michael L. Brem, Esq. of Baker & Botts, located in Houston, Texas.

CASE INFORMATION

Statement of Claim filed: March 15, 1993.

Claimant's Submission Agreement signed on: March 3, 1993.

Statement of Answer filed by Respondent Kemper on: June 5, 1993.

Respondent's Submission Agreement signed on: June 3, 1993 by Janet L. Reali, Esq., Senior Vice President/Associate General Counsel, Kemper Securities, Inc.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: March 3, 1994 for Two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant Murphy alleged that Respondent Kemper failed to pay commissions to her in violation

of the terms of her contract which stated that Claimant was entitled to receive compensation for deals that closed prior to or within 18 months of the termination of her employment. In June, 1989, Murphy was hired as a First Vice President in the Corporate Finance Department of Underwood, Neuhaus & Co., a predecessor to Kemper. In June of 1990, Murphy's employment was terminated. Within the time frame agreed to, two transactions were closed in which Murphy was entitled to compensation. Kemper has failed to pay the commissions. Murphy alleged breach of contract and fraud.

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

1. Murphy's personal production failed to meet the minimum production required under the contract for her to receive a bonus;
2. One of the two transactions which Murphy claims she is due commission was never completed and the assignment not secured; and
3. The claim for fraud should be dismissed because her statement of claim fails to assert any facts which might give rise to a cause of action for fraud under Texas law.

RELIEF REQUESTED

Claimant Murphy requested that she be awarded the sum of \$47,731.45 from Respondent, plus reasonable attorneys' fees, pre-judgment and post judgment as allowed by law, costs, and such other relief to which she was entitled.

Respondent requested that it have judgment in accordance with the law and the facts, that it have the attorneys' fees and costs of court expended in this matter, and that it have such other relief to which it showed itself entitled.

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 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. The Statement of Claim is hereby dismissed and denied in its entirety;

2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. All relief requests not specifically granted are hereby denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) sessions x \$600.00 per session = \$1,200.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 non-refundable claim filing fee and the \$600.00 hearing session deposit previously deposited by the Claimant, Marty Wynne Murphy. Respondent Kemper Securities, Inc. is liable for and shall pay to the NASD forum fees in the sum of \$600.00.

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

Concurring Arbitrators' Signatures
Name

Date

/s/ Thomas J. Lisenby
Thomas J. Lisenby
Industry Arbitrator
Chairperson

April 26, 1994

/s/ Robert M. Birenbaum
Robert M. Birenbaum
Industry Arbitrator

April 26, 1994

/s/ David J. Schnepf
David J. Schnepf
Industry Arbitrator

April 26, 1994

For NASD Use Only

Date of Decision: 4-26-94