

NASD STIPULATED AWARD

Claimant

Kemper Securities, Inc. f/k/a Kemper
Securities Group, Inc.

Respondents

Kenneth Tripoli

Case Number

93-01747

REPRESENTATION

For Claimant, Kemper Securities, Inc. f/k/a Kemper Securities Group, Inc. ("Kemper"): A. Brad Busscher, Esq. of Kemper, Chicago, Illinois.

For Respondent, Kenneth Tripoli: Marc Ross, Esq. of Bernstein & Wasserman, New York, New York.

CASE INFORMATION

Statement of Claim filed: April 27, 1993. Claimant's Submission Agreement signed: April 22, 1993.

Respondent's Statement of Answer filed: June 28, 1993. Respondent's Submission Agreement signed: June 24, 1993

HEARING INFORMATION

On May 5, 1994 in Ft. Lauderdale, Florida a hearing lasting 2 sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondent breached an agreement to contribute \$20,000.00 towards a litigation settlement paid by Claimant. Both Claimant and Respondent were named as defendants in the litigation. Alternatively, Claimant requested contribution from Respondent for the entire amount of the settlement paid by Claimant in addition to all legal fees paid by Claimant on

behalf of both Claimant and Respondent. Claimant also alleged non-payment of a Promissory Note in the amount of \$90,000.00.

Respondent denied all allegations of wrongdoing and alleged that: at no time did he agree to contribute \$20,000.00, however he did agree to contribute up to \$10,000.00 if Claimant was able to settle the litigation in all respects. Respondent also alleged that his performance under the Promissory Note was made impossible since the predecessor firm to Claimant, to whom the Promissory Note was payable, ceased operations. Respondent also alleged that he was never employed by Claimant.

RELIEF REQUESTED

Claimant requested damages in the amount of \$20,000.00 pursuant to Respondent's breach of contract or, alternatively, contribution from Respondent for the full amount of the settlement in the amount of \$78,750.00 plus all legal fees paid by Claimant on behalf of Claimant and Respondent in the amount of \$108,000.00, plus damages in the amount of \$90,000.00 pursuant to the Promissory Note, plus interest, costs, expenses and attorney's fees pursuant to the Promissory Note.

Respondent requested dismissal of the claim plus costs, expenses and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Following the Claimant's presentation of its case-in-chief, the parties advised the Panel that they had reached a settlement which was to be memorialized in this Award. The parties also read their agreement into the record.

AWARD

This matter came before the undersigned Arbitrators upon stipulation of the parties to the controversy as set forth in the submission to arbitration. The Arbitration Panel, having considered the pleadings and reviewed this Stipulated Award which was prepared by the parties have decided in full and final resolution of the issues submitted for determination as follows:

1. The undersigned panel hereby consents to this Stipulated Award by the parties, the substance of which is contained in the record of proceedings and which is set forth more fully below.
2. Respondent, shall pay to Claimant the sum of \$30,000.00 based on the following terms:
 - a. \$15,000.00 payable on or before May 13, 1994; and,

b. \$15,000.00 payable on or before June 13, 1994.

3. In the event Respondent fails to comply with payment terms specified in paragraph (2) above, Respondent shall pay to Claimant the sum of \$50,000.00, less any payment(s) made by Respondent to Claimant.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$1,500.00 (2 sessions x \$750.00 per session).

1. Claimant is hereby assessed \$750.00 for which the NASD shall retain the \$750.00 previously deposited in full satisfaction thereof.

2. Respondent is hereby assessed \$750.00 payable to the National Association of Securities Dealers, Inc..

3. The NASD shall retain the non-refundable filing fee of \$500.00 paid by the Claimant.

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

Concurring Arbitrators' Signatures

Public/Industry

/s/
Gary W. Pollack, Esq.

Industry/Chairman

/s/
Terrence W. Grant

Industry

/s/
Leon J. Steiner

Industry

Date of Decision: 6-29-94