

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Patrick Dora

93-01849

Names of Respondents

Kemper Securities Inc.,
John Jetter and
Daniel Laraway

REPRESENTATION

Claimant, Patrick Dora ("Dora") was represented by Michael Salcido, Esq. of Scottsdale, Arizona.

Respondents, Kemper Securities, Inc. ("Kemper"), John Jetter ("Jetter") and Daniel Laraway ("Laraway") were represented by Keith Beauchamp, Esq. of Lewis and Roca, Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on May 6, 1993.

Claimant, Dora's Submission Agreement was signed on March 24, 1993.

The Joint Statement of Answer was filed with the NASD by Respondents, Kemper, Jetter and Laraway on June 30, 1993.

Respondent, Kemper's Submission Agreement was signed on May 25, 1993 by Janet L. Reali, Sr. Vice President/Associate General Counsel. Respondent, Laraway's Submission Agreement was signed on May 14, 1993 and Respondent, Jetter's Submission Agreement was signed on May 14, 1993.

HEARING INFORMATION

The hearing took place on December 2, 1993 for two (2) hearing sessions and December 3, 1993 for two (2) hearing sessions.

The hearing location was Scottsdale, Arizona.

CASE SUMMARY

Claimant, Dora alleged that he was an unsophisticated, conservative investor who needed his money to be readily available because he was going to start a new business. Dora asserted that despite his instructions and investment objectives, Kemper recommended unsuitable investments, conducted improper activities and engaged in trading that was unsuitable and inconsistent with Dora's desire to withdraw funds when he found an appropriate business opportunity. The recommendations included buying securities on margin, option writing, improper trading in mutual funds and bonds and investments lacking safety and security. In addition, Dora was sold an unregistered security, Universal Engineering and Development.

The specific causes of action asserted by Dora were as follows:

1. Sale of unregistered securities in violation of the Securities Act of Arizona, A.R.S. §44-1841, as well as other statutes that may apply.
2. Securities fraud in violation of the Securities Act of Arizona, A.R.S. §44-1991, as well as other state statutes which might apply.
3. A scheme or artifice to defraud, in violation of A.R.S. §13-2310.
4. Racketeering as defined in A.R.S. §13-2301(D)(4).
5. Fraud.
6. Unsuitable recommendations.
7. Negligent misrepresentation.
8. Breach of fiduciary duty.
9. Breach of contract.

10. Negligence.
11. Negligent supervision and/or failure to supervise.

Respondents, Kemper, Laraway and Jetter alleged that Dora squandered much of his inheritance and wants Respondents to replenish his funds. Dora also allegedly misrepresented the damages and activity in his account. Respondents denied there were any forged documents, that discretion was exercised in his account, that options were traded in his account or that an unregistered security was sold to him for his account. Respondents asserted that the account declined in value due to Dora's substantial withdrawals and not due to any impropriety on the part of Respondents.

As to the Universal Engineering claim, Respondents asserted that he purchased his securities directly from the company and held them outside his account. Since the securities were not purchased through Kemper or Laraway, there could be no violation of the Arizona Securities Statute. Respondents asserted that Dora's RICO claim should be dismissed because the dispute was governed by California law and there is no RICO statute in California. In addition, the state securities claims were time barred by the one year statute of limitation and his negligence, negligent misrepresentation, breach of fiduciary duty and negligent supervision claims were time barred by a two year statute of limitations.

RELIEF REQUESTED

Dora requested actual compensatory damages in an amount to be determined at the hearing but in no event less than \$170,000.00, treble damages pursuant to A.R.S. §13-2314, punitive damages in an amount to be determined at hearing, costs and attorney's fees, including all NASD fees, pursuant to A.R.S. §§12-341.01, 13-2314 and 44-2001, pre and post judgment interest as allowed by law and such other relief as was deemed just and proper.

Kemper, Laraway and Jetter requested dismissal of the claim in its entirety and an award of attorney's fees and costs.

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 claims asserted against Jetter by Dora are denied in their entirety;
2. Kemper and Laraway are jointly and severally liable for and shall pay to Dora, the sum of One Hundred twenty two thousand eight hundred three dollars and sixteen cents \$122,803.16 in compensatory damages;
3. The claims for damages under the Arizona RICO Statute and punitive damages are denied in their entirety;
4. Kemper and Laraway are jointly and severally liable for and shall pay to Dora, the sum of Ten thousand dollars and no cents \$10,000.00 as attorney's fees and costs pursuant to A.R.S. §12-341.01; and,
5. Other than the sums stated above in paragraph 4, the parties shall each bear their respective attorney's fees, costs and expenses.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$250.00 non-refundable claim filing fee and the \$1000.00 hearing session deposit paid to the NASD by Dora. Kemper is to directly reimburse Dora for these sums and is assessed additional Forum Fees in the sum of \$3000.00. Forum Fees were assessed on the basis of \$1000.00 per hearing session for Four (4) hearing sessions.

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Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

s/s James Duke Cameron
Hon. James Duke Cameron
Presiding Chairperson
Public Arbitrator

February 8, 1994
Dated

s/s Joseph F. Gross
Joseph F. Gross, Ph.D.
Panelist
Public Arbitrator

February 8, 1994
Dated

s/s Douglas E. McArthur
Douglas E. McArthur
Panelist
Industry Arbitrator

February 8, 1994
Dated

Date award served on the parties by the NASD: February 9, 1994