

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Stanley T. Johnson

93-02433

Name of Respondent(s)

Kemper Securities, Inc. as successor to  
Prescott, Ball & Turben Inc.

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**REPRESENTATION**

For Claimant Stanley T. Johnson: Gerald M. Coakley, P.C., Newton, MA.

For Respondent Kemper Securities Group, Inc. as Successor to Prescott Ball and  
Turben, Inc.: John B. Lewis, Esq. and Shelly A. Goering, Esq. of the law firm  
of Arter & Hadden, Cleveland, Ohio.

**CASE INFORMATION**

These are among the papers filed by the parties:

Statement of Claim filed: June 21, 1993.

Claimant's Trial Brief filed.

Claimant's Submission Agreement signed on: June 30, 1993.

Claimant's Post-Hearing Brief filed.

Statement of Answer filed by Respondent Kemper Securities Group, Inc. on:  
October 6, 1993.

Respondent Kemper Securities Group, Inc.'s Submission Agreement signed on:  
October 4, 1993.

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Amended Answer filed: June 9, 1994.

Respondent's Pre-hearing Brief filed.

Respondent's Post-Hearing Brief filed.

### **HEARING INFORMATION**

Pre-hearing conferences:           April 5, 1994  
  April 27, 1994 / (Three Arbitrators)  
  June 15, 1994

Hearing Dates/Sessions:           June 20, 1994 / Two Sessions  
  June 21, 1994 / Two Sessions  
  Sept 21, 1994 / Two Sessions  
  Sept 22, 1994 / Two Sessions  
  Oct. 20, 1994 / Two Sessions

Hearing Location:    Boston, MA.

### **CASE SUMMARY**

Claimant, with a date of birth of November 5, 1935, alleges that he commenced employment with Prescott, Ball & Turben, Inc. as an institutional salesman in their Boston, Massachusetts office in September 1984 and the Respondent, Kemper Securities Group, Inc., purchased Prescott, Ball & Turben, Inc. on July 19, 1990, subsequent to April 23, 1990, the date on which the Claimant was allegedly wrongfully terminated from his employment because of his age.

Claimant further alleges when he was hired in September, 1984, there was another institutional salesman in the Boston office, William Crane, who was hired on January 2, 1973, with a date of birth of January 16, 1943, making him approximately seven years younger than the Claimant and on July 6, 1987, another institutional salesman was hired for the Boston office, Thomas Gabel, with a date of birth of September 4, 1962 making him twenty-seven years younger than the Claimant.

Claimant further alleges he increased his productivity from \$50,000.00 the first year of his employment to \$574,000.00 four years later. Claimant further alleged in 1987, he gave \$50,000.00 worth of his accounts to Thomas Gabel in order to assist him in getting started at his new position and Thomas Gabel worked with Donald Eller at Ralston and Company, Cleveland, Ohio, and when

Donald Eller transferred to Prescott, Ball & Turben in Cleveland, Ohio, he recommended Thomas Gabel to commence working in that office and subsequently Donald Eller aided Gabel's transfer to the Boston office. Claimant further alleged his work production had never been criticized or commented on negatively by Donald Eller or any other executive in the Respondent company. To the contrary, the Claimant had worked to make the Boston office the best office throughout the nation and after the Claimant was allegedly wrongfully terminated on April 23, 1990, the stock-related commissions in general had a vigorous upswing which would have given the Claimant a projected earnings of at least \$250,000.00 per year.

Claimant further alleges that William Crane, as Manager of the Boston office, went through the Claimant's files and accounts without his permission while the Claimant was on vacation in February of 1990 in order to determine the amount of production of his accounts so Claimant's accounts could be divided. Claimant alleges that when he returned from his February 28, 1990 vacation, he was advised by Donald Eller, National Manager, who had been put in charge of the Boston office in May of 1989, that he should look for a new job and Donald Eller did not criticize or comment on the Claimant's work performance or productivity and gave the Claimant no "business-related" reason for his termination. Claimant further alleges the Respondents, through their agents, servants, employees and officers, deliberately gave the Claimant no "business reason" for terminating his employment because they were aware it was unlawful to fire someone based solely on their age. Claimant further alleges that the Boston Manager, William Crane, was concerned that his two-year written contract was about to expire in April of 1990, and thus desired to obtain one-half of the Claimant's accounts. Claimant further alleges on April 9, 1990, he received official written notice that he was to be terminated on April 23, 1990, but still no "business related" reason was given for his firing. Claimant further alleged his productivity increased tenfold from September, 1984 through April, 1990, and yet during the same period, the younger salesman and office manager William Crane's productivity decreased approximately twenty-five percent.

Claimant alleges he filed a timely complaint with the Massachusetts Commission Against Discrimination and with the Equal Employment Opportunity Commission within six months of his termination on April 23, 1990 and the Claimant filed a timely complaint, within the Statute of Limitations, in the Massachusetts Superior Court and the Respondent removed the action to the U.S. District Court for Massachusetts, and upon Respondent's motion, the Court ordered the case to compulsory arbitration. The Claimant further alleges the Respondent conspired willfully to terminate the Claimant's employment based solely on his age and either knew or showed a reckless disregard for the matter of whether their

conduct was prohibited by the Age Discrimination in Employment Act ("ADEA") and Claimant further alleged there were several employees, all over the age of forty which were terminated in the same period by the same executive.

Respondent denies all of the allegations contained in the Statement of Claim and maintains no one was hired to replace the Claimant and his institutional sales position in the Boston office was thus eliminated and the institutional production of the Boston office increased significantly after Claimant's termination, when there were two instead of three salesmen. Respondent further maintains that Claimant, in breach of his agreement to arbitrate, filed litigation against Respondent and the Claimant's age claims are time-barred and the doctrine of laches as well bars Claimant's claims, and, at a minimum, limits his damages. Respondent further maintains Claimant cannot prove a prima facie case, because Claimant cannot prove that he was performing his job at a level meeting Respondent's legitimate expectations and Claimant's opinion that he is as qualified or better qualified than other employees retained by Respondent is irrelevant and Claimant's allegations concerning alleged discrimination against other employees is not relevant or material. Respondent further maintains in the years referenced in Claimant's Statement of Claim his production was lower than the average production for full time institutional salespersons. Respondent maintains that Claimant's last day of employment was February 28, 1990. Respondent further maintains its actions with regard to Claimant were at all times in good faith and without intent to discriminate and any differentiation in treatment that may have existed with regard to Claimant was based on reasonable factors other than age and Claimant was terminated due to legitimate non-discriminatory business justifications and Claimant, as an employee at will, was subject to termination at any time and Claimant is not entitled to damages and, in the alternative, Claimant has failed to mitigate his claimed damages.

#### **RELIEF REQUESTED**

Claimant requests actual damages suffered by the alleged unlawful discharge in amounts alternatively calculated ranging from approximately \$287,000.00 to \$1,055,000.00. Claimant also seeks multiple damages.

Respondent requests an award in its favor.

#### **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. The Respondent Kemper Securities Inc. as successor to Prescott, Ball and Turben, Inc. be and hereby is liable and shall pay to the Claimant Stanley T. Johnson the sum of \$125,000.00.
2. All other claims for damages are denied.
3. Each party shall bear their respective costs including attorneys' fees.

#### **FORUM FEES**

Pursuant to Section 43 (c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

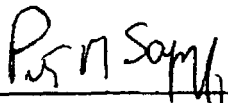
2 pre-hearing conferences (sole arbitrator) (\$600.00) + 1 pre-hearing conference (panel) (\$1,000.00) + 10 hearing sessions \$10,000.00 = \$11,600.00 due.

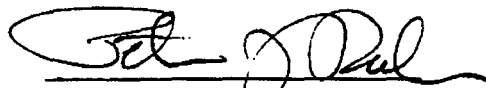
#### **Forum Fees Assessed Against:**

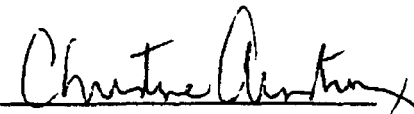
The Claimant be and hereby is liable and shall pay to the NASD \$2,000.00 representing the forum fees for the hearing on September 21, 1994. The balance of the forum fees are to be split equally with the Claimant paying \$3,800.00 to the NASD (1/2 of \$9,600.00 minus the hearing session deposit of \$1,000.00) and the Respondent shall pay the sum of \$4,800.00 representing forum fees.

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

ARBITRATORS' SIGNATURES

  
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Peter M. Saporoff, Esq.  
Public Arbitrator

  
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Peter J. Dale, Esq.  
Public Arbitrator

  
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Christine Armstrong, Esq.  
Industry Arbitrator

Execution  
Date of ~~Decision~~ *overruled 30, 1994*

Date of Decision: January 6, 1995