

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

James Hayett

93-04984

**Name of Respondent**

Kemper Securities, Inc.

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**REPRESENTATION**

For Claimant: James Hayett ("Hayett") was represented by James A. Bolt, Esq., of New Berlin, Wisconsin.

For Respondent: Kemper Securities Inc. ("Kemper") was represented by Michael H. Schaalman, Esq. of Quarles & Brady, located in Milwaukee, Wisconsin.

**CASE INFORMATION**

Statement of Claim filed: December 2, 1993.

Claimant's Submission Agreement signed on: November 18, 1993.

Statement of Answer filed by Respondent on: February 18, 1994.

Respondent's Submission Agreement signed on: December 29, 1993 by Janet L. Reali, Executive Vice President/Corporate Counsel, Kemper Securities, Inc.

**HEARING INFORMATION**

Pre-Hearing Conference: January 5, 1995 for One (1) session.

Hearing Dates/Sessions: November 7, 1994 for Two (2) sessions;  
November 8, 1994 for Two(2) sessions;  
November 9, 1994 for Two (2) sessions;

November 10, 1994 for Two (2) sessions;  
November 11, 1994 for Two (2) sessions;  
February 20, 1995 for Two (2) sessions;  
February 21, 1995 for Two (2) sessions; and  
February 22, 1995 for Two (2) sessions.

Hearing Location: Milwaukee, Wisconsin.

### **CASE SUMMARY**

Claimant Hayett alleged that Kemper wrongfully terminated his employment and filed libelous Form U-5s in connection with the termination. Hayett specifically alleged that:

1. Hayett began his employment with Blunt, Ellis and Loewi, a wholly owned subsidiary of Kemper, in 1984. Hayett's employment was successful, and resulted in him being promoted to Vice President in 1987;
2. On February 6, 1988, Hayett was required to take an unannounced drug test in his own home or face dismissal. The test was negative, but the embarrassment of the investigation of the drug rumors forced Hayett to go to another office. Hayett was promised further promotions and bonuses at the new office, but a conflict with the branch manager resulted in Hayett returning to the downtown office as assistant manager. On March 26, 1990, Hayett was promoted to Director of Sales Training;
3. During Hayett's employment, four customer complaints were received regarding his handling of accounts in 1988-1990. However, Kemper advised Hayett not to worry and did not report the complaints until after the termination of his employment May 29, 1990;
4. In May 1990, Hayett spoke to his branch manager about his concern regarding the health of one of his clients. After review of the records and numerous conflicting phone calls, Hayett was terminated on May 29, 1990;
5. The Form U-5 termination notice filed by Kemper stated that Hayett had been terminated for "privately" meeting with the client after he had been instructed to refrain from contacting her. It further stated that the client had registered a verbal complaint with the firm when no such complaint was made and the client had written a letter expressly stating that no complaint was made. In September 1990,

Kemper filed an amendment to the Form U-5 stating that the client had filed a complaint alleging that Hayett had misappropriated \$1,500.00 of her funds, among other things. This resulted in an investigation of Hayett by the NASD, the NYSE and the State of Wisconsin which found no basis for the complaint;

6. Hayett had difficulties in finding employment because of the false information on the original and amended Form U-5s which were filed by Kemper. Repeated requests were made to amend the Form U-5 to remove the allegations of misappropriation of funds, but it was not until March 20, 1992 that an amended Form U-5 was filed.

Based upon the above allegations, Hayett asserted claims for libel; intentional infliction of emotional distress; injury to business in violation of Wisconsin Statute §134.01; wrongful termination; breach of the implied standard of conduct imposed by the NASD's just and equitable principles of trade; and interference with the right to contract with others.

Respondent Kemper denied the material allegations of the Statement of Claim and asserted the following affirmative defenses:

1. Hayett has failed to mitigate damages;
2. The claims are barred by the statute of limitations;
3. The claims are barred by laches;
4. The Statement of Claim failed to state a claim for which the arbitrators can grant relief;
5. The statements contained in the Form U-4 and U-5 are privileged; and
6. Hayett's claims are barred by Wisconsin's Workers Compensation exclusive remedy provision, §102.03(2) Wis. Stats.

#### **RELIEF REQUESTED**

Claimant requested entry of an award for damages in the sum of \$15,000,000 for violation of Counts I, II and V of the claim; compensatory damages of not less than \$3,000,000 for Counts III, IV and VI of the claim; punitive damages in the sum of \$15,000,000; reasonable attorneys' fees and costs; and an order requiring Kemper to amend the Form U-5 to reflect that the complaints related to investments actively promoted by Kemper and resulted from Kemper's failure to adequately conduct "due diligence."

Respondent requested that the Statement of Claim be dismissed on its merits and with prejudice; that Kemper be awarded its costs, including reasonable attorneys' fees; and any further relief which the Panel deemed just and equitable.

### **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 with prejudice 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. Any relief not specifically granted is hereby denied.

### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing session x \$300.00 per session = \$300.00; Sixteen (16) hearing sessions x \$1,500.00 per session = \$24,000.00; Total forum fees = \$24,300.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 claim filing fee and the \$1,500.00 hearing session deposit previously deposited by the Claimant, James Hayett. Claimant James Hayett is liable for and shall pay to the NASD the sum of \$10,650.00 as additional forum fees. In addition, Respondent Kemper Securities, Inc. is liable for and shall pay to the NASD the sum of \$12,150.00 as forum fees.

N.A.S.D. Arbitration No.93-04984

Award Page 5 of 5

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

Concurring Arbitrators' Signatures

Name

Date Signed:

/s/ H. Rollin Allen, Esq.

April 28, 1995

H. Rollin Allen, Esq.

Public Arbitrator

Chairperson

/s/ Gordon F. Knight, Ph.D.

April 28, 1995

Gordon F. Knight, Ph.D.

Public Arbitrator

/s/ Frank G. Bank

April 28, 1995

Frank G. Bank

Industry Arbitrator

For NASD Use Only

Date of Decision: May 1, 1995