

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

Kemper Securities, Inc.,

Claimant,

v.

No. 93-05362

Steven P. Sacramone,

Respondent.

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**REPRESENTATION OF PARTIES**

Claimant was represented by Michael Kraft, Esq., of Siegan, Barbakoff, Gomberg & Kane, Ltd., Chicago, Illinois.

On January 31, 1995, Respondent Steven P. Sacramone ("Respondent") appeared pro se by speaker phone. On March 2, 1995, Respondent failed to appear.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on or about December 23, 1993. Claimant's Submission Agreement was signed on December 21, 1993. Claimant's Response to Respondent's Counterclaim was filed on or about September 16, 1994.

Respondent's Counterclaim was filed on or about August 16, 1994.

**HEARING INFORMATION**

Hearing date: January 31, 1995. Two (2) sessions.  
March 2, 1995. One (1) session.

Hearing Location: Kansas City, Missouri.

**CASE SUMMARY**

Claimant alleged that the parties voluntarily entered into a promissory note (the "Note"). Pursuant to the terms of the Note, Respondent was loaned the sum of \$35,000.00. The \$35,000.00 was to be

repaid in four (4) equal annual installments plus interest at the rate of 10% per annum on the unpaid balance of the Note. The Note also provided that, in the event of termination, for any reason, the unpaid balance of the principal due and owing under the Note, plus accrued interest, would be due and payable as of the date of termination. Claimant also alleged that Respondent's voluntary termination occurred on June 2, 1992. Claimant further alleged that despite demand for payment, Respondent failed to make any payments under the Note, and that Respondent has failed to honor his obligations to the Claimant.

In his Counterclaim, Respondent alleged that Claimant committed fraud in breach of contract in that no minimums on his production were ever discussed and that the reduction of his payout to 25% was in violation of the contract he had with the Claimant. Respondent also alleged fraud in breach of contract in that he had an oral agreement with the Claimant that Claimant would not pursue him for the Note, and he would leave his accounts with Claimant. Claimant further alleged that he never signed a resignation letter, and that the signature on the letter is a forgery. Lastly, Respondent alleged that slanderous statements about him were made by Claimant's employees subsequent to his departure from employment with Claimant, and that he has been damaged by a reduction in income caused by the slander.

In its Response, Claimant denied the allegations contained in the Counterclaim. In addition, Claimant asserted that; Respondent's Counterclaim should be dismissed; Respondent's fraud claims are factually and legally without merit; all monies due Claimant from Respondent arise out of a valid promissory note, and that Claimant never excused payment; Respondent's Resignation letter was not forged; and Respondent has no claim for slander.

### **RELIEF REQUESTED**

Claimant requested that it be granted an award against the Respondent for the following:

- A. The principal balance due and owing under the Note;  
\$35,000.00
- B. Interest accrued during the term of the Note at the contract rate of 10%;  
\$4,775.82
- C. Interest on the balance due and owing under the Note from the date of default  
(06/02/1992) to 12/21/1993, at the contract rate of 10% per annum (\$9.59 per  
day); \$5,437.53
- D. Interest on the balance due and owing under the Note at \$9.59 per day from  
12/21/1993 to date of payment;  
(unknown)
- E. Any other relief that the arbitrators deem just.

Respondent/Counterclaimant requested an award of \$250,000.00 in lost commissions minus the \$35,000.00 with the interest they want. Respondent also requested reimbursement for expenses paid

to Las Vegas arbitration with Mr. Huseby.

Claimant requested that Respondent's claims be dismissed in their entirety and that judgement be awarded to Claimant in the full amount of its claim.

### **OTHER ISSUES CONSIDERED & DECIDED**

On July 26, 1994, pursuant to Section 25(b) of the Code of Arbitration Procedure (the "Code"), Claimant made a request to preclude any Counterclaim filed by the Respondent. Respondent filed his Counterclaim on August 16, 1995. After consideration of the request, and deliberation, the undersigned arbitrators allowed the Counterclaim to be filed.

Respondent did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 8 of the Code and having answered the claim, appeared at the hearing, and therefore is bound by the determination of the panel on all issues submitted.

On January 23, 1995, Respondent filed with the NASD a request to postpone the hearing. Claimant filed its response on January 26, 1995. After consideration of the request and the response, the arbitrators denied Respondent's request. The parties were informed of the panel's decision on January 30, 1995.

On January 31, 1995, during the course of the hearing, Respondent requested additional time to prepare his case. After hearing argument from the parties, and deliberation, the arbitrators granted the continuance request, and rescheduled the hearing to March 2, 1995, at 8:30 a.m. by conference call. Notice of the March 2, 1995, hearing date was sent to Respondent by United Parcel Service Next Day Air service, on February 23, 1995. The panel also set specific dates for Respondent to respond to Claimant's Motion to Compel (February 8, 1995) and for Respondent to provide a list of witnesses and to produce documents that Respondent intended to use at the March 2, 1995, hearing by February 17, 1995.

On February 28, 1995, Claimant filed a Motion to Strike and to Dismiss Respondent's Counterclaim. The motion asserted that Respondent failed to comply with the panel's January 31, 1995, Order. A request for a response was sent, along with a copy of the motion, to the Respondent by Federal Express on February 28, 1995. The motion was taken up at the hearing on March 2, 1995.

Upon review of the file and the representations made by/on behalf of the Claimant, the panel has, on March 2, 1995, determined that Respondent has been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the Code. The panel also determined that Respondent had received due notice of the hearing as required under Section 26 of the Code, and that the arbitration of the matter would proceed pursuant to Section 29 of the Code.

On March 2, 1995, Respondent raised the issue of its February 28, 1995, Motion to Dismiss.

Respondent failed to appear and present any argument or testimony at the hearing. After deliberation on Claimant's motion, the undersigned arbitrators granted Claimant's Motion to Dismiss Respondent's Counterclaim.

On March 6, 1995, the NASD received an undated letter from Respondent making a "Motion that a new arbitration team be assigned." Due to the fact that substantive hearings were held on January 31, 1995, and March 2, 1995, Respondent was informed by the NASD that the motion would be treated as a request for the panel to recuse themselves. On March 30, 1995, Respondent's request, as well as Claimant's response were forwarded to the panel for consideration. After review of the pertinent documents, and Canon II E. (2) of the Code of Ethics For Arbitrators in Commercial Disputes, the undersigned arbitrators declined Respondent's request to recuse themselves from the panel in this arbitration.

### **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:

Respondent Steven P. Sacramone is liable for and shall pay to the Claimant, Kemper Securities, Inc., the sum of \$49,934.59 as satisfaction of its claim for compensatory damages and interest.

Respondent Steven P. Sacramone's Counterclaim is denied in its entirety, and dismissed with prejudice.

### **OTHER COSTS**

Respondent Steven P. Sacramone is liable for and shall pay to the Claimant, Kemper Securities, Inc., the sum of \$9,641.85 as satisfaction of its claim for attorneys' fees.

Respondent Steven P. Sacramone is liable for and shall pay to the Claimant, Kemper Securities, Inc., the sum of \$1,100.00 as satisfaction of its claims for costs.

Except as specifically set forth in this Award, each party shall bear its own costs associated with this arbitration.

**FORUM FEES**

Pursuant to Section 44(c) of the Code, the following forum fees are assessed:

3 hearing sessions @ \$600.00 per session

Total hearing session fees to be assessed \$1,800.00

Pursuant to Section 44(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$500.00, and shall retain the hearing session deposit in the amount of \$600.00 previously paid to the NASD by the Claimant.

Pursuant to Sections 30(b) and 44(c) of the Code, Respondent Steven P. Sacramone is assessed a postponement fee of \$600.00 for the continuation granted by the arbitrators on January 31, 1995.

Pursuant to Sections 25(b)(1) and 44(c) of the Code, Respondent is assessed the sum of \$500.00 for his Counterclaim filing fee which was due upon the filing of his Counterclaim.

Additional forum fees in the amount of \$1,200.00 are assessed against Respondent Steven P. Sacramone.

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

**CONCURRING ARBITRATORS**

Dated:

Name:

April 18, 1995

Robert L. Cowee /s/  
Robert L. Cowee  
Presiding Chair  
Industry Arbitrator

April 20, 1995

Lonnie L. Cunningham /s/  
Lonnie L. Cunningham  
Industry Arbitrator

April 26, 1995

Marshall E. Talbot /s/  
Marshall E. Talbot  
Industry Arbitrator

11-71-05