

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Michael B. Kincaid

94-00058

Name of Respondents

Kemper Securities, Inc.
Thomas V. Meaglia

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 4, 1994, Claimant Michael B. Kincaid, who appeared Pro Se, alleged that he invested \$9,500.00 of his retirement money in the Aetna Real Estate Limited Partnership after Respondent Thomas V. Meaglia ("Meaglia") reassured him that the funds would be accessible and secure. Claimant further alleged that he requested the withdrawal of his funds in October, 1992 from Respondent Meaglia, who was employed at that time by Respondent Kemper Securities, Inc. ("Kemper"). Claimant contended that Respondent Meaglia then told him that his investment had become "frozen" and it would "take one year or more" to access his funds. Claimant further contended that he was not informed about the status change of his account which rendered his funds inaccessible until after he attempted to access them. Claimant alleged that he would have "rolled over" his account into another fund which allowed accessibility had he been informed prior to the change in status. Claimant further alleged that the value of his investment decreased substantially immediately after his requested access. Claimant contended that he would never have knowingly invested in a fund which he could not always have access to. As a result of the above, Claimant alleged that he has suffered damages for which the Respondents should be held liable.

Respondent Kemper Securities, Inc., through its in-house counsel Don Andrews, Esq., Chicago, Illinois, maintained that it is falsely and needlessly named as a

Respondent since Claimant did not purchase the investment in question through it. Respondent further maintained that its contact with Claimant has been limited to its compliance department reminding Claimant that his investment was subject to restrictions on transferability, and that a premature withdrawal from his IRA account would result in taxes and penalties. Respondent contended that it also notified Claimant that he could transfer his account at any time, as well as contact the Partnership directly about the liquidation of the units. As a result of the above, Respondent maintained that it should not be held liable in this matter.

Respondent Thomas V. Meaglia, through his counsel William K. Henley, of Hahn & Hahn, Pasadena, California, maintained that Claimant did not tell him that he would want to withdraw his money from the investment in question prior to his retirement. Respondent further maintained that based upon the investment goals stated to him by Claimant, he recommended the investment in question, which he believed was an investment that met Claimant's goals. Respondent contended that before Claimant made the investment in question, he explained that there were restrictions on the transferability of the investment and, therefore, the investment was not liquid or accessible to be cashed out, except under certain circumstances. Respondent further contended that before Claimant made the investment, he gave him a prospectus and encouraged him to read it and ask questions. As a result of the above, Respondent maintained that he should not be held liable in this matter.

RELIEF REQUESTED

Claimant Michael B. Kincaid requested \$8,667.00 in actual damages, plus \$150.00 in costs.

Respondent Kemper Securities, Inc. requested that the Claimant's Statement of Claim be dismissed in its entirety, and that costs and expenses be assessed against the Claimant.

Respondent Thomas V. Meaglia requested that the Claimant's Statement of Claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Kim T. Buckley, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 21, 1993, by Respondent Kemper Securities, Inc. on April 25, 1994, and by Respondent Thomas V. Meaglia on April 8, 1994.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant Michael B. Kincaid against Respondents Kemper Securities, Inc. and Thomas V. Meaglia are dismissed in their entirety.
2. The parties shall bear their respective costs, including attorney's fees.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, **KIM T. BUCKLEY**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: September 29, 1994