

**NASD AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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In the Matter of the Arbitration Between

Kemper Securities, Inc.

and

NASD Case Number 94-00228

Bryon Jorgensen

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**REPRESENTATION OF PARTIES**

Claimant, Kemper Securities, Inc. was represented by Michael Kraft, Esq. and Diane C. Fischer, Esq. of Gomberg Kane & Fischer, Ltd. located in Chicago, Illinois.

Respondent, Byron G. Jorgensen was represented by Catherine A. Gnatek, Esq. of Dorsey & Whitney located in Minneapolis, Minnesota.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 20, 1994.

Submission Agreement of Claimant, Kemper Securities, Inc. was signed on January 18, 1994 by A. Brad Busscher, Vice President and Senior Counsel of Kemper Securities, Inc.

Statement of Answer was filed by Respondent, Bryon G. Jorgensen on or about March 17, 1994.

Submission Agreement of Respondent, Bryon G. Jorgensen was signed on March 17, 1994.

**HEARING INFORMATION**

Pre-hearing conferences were held on April 6, 1995 and on August 11, 1995 for a total of two (2) pre-hearing sessions before one arbitrator.

The hearing was held on August 14, 1995 in Omaha, Nebraska for a total of two (2) hearing sessions before three arbitrators.

**CASE SUMMARY**

In the Statement of Claim, Kemper Securities, Inc. ("Kemper") alleged that the Respondent, Byron G. Jorgensen ("Jorgensen") owed Kemper monies for the cost of his training as a registered

representative trainee and as a registered representative. As alleged, the parties voluntarily entered into a Trainee Agreement ("the Agreement") on August 11, 1993 wherein the Respondent agreed to repay Kemper for the cost of his training in the amount of \$36,000.00 which would be reduced by 1/24th for each month of employment following the first full year of employment. The Agreement also allegedly provided that the Respondent would surrender all records and information contained therein relating to Kemper clients upon termination, that the Respondent would not solicit or caused to be solicited Kemper clients whose names the Respondent had learned through his employment with Kemper for a period of one year from date of termination and that the Respondent would not accept employment in the capacity of a registered representative or in sales with any securities broker or dealer, investment adviser, commodity trading advisor or commodities futures commission merchants in order to effect securities or commodities transactions for six months following termination. The Respondent's resignation from Kemper occurred on December 7, 1993. According to the Claimant and contrary to the Agreement, Jorgensen removed Kemper's proprietary property in the form of records and information relating to Kemper clients, the Respondent solicited Kemper clients and the Respondent accepted employment as a registered representative with a securities broker dealer. On or about December 17, 1993, Kemper allegedly tendered a demand to Jorgensen to honor the remaining financial and other obligations under the Agreement yet, to date, the Respondent has failed and refused to honor the demand.

In his Statement of Answer, Bryon G. Jorgensen denied the allegations contained within the Statement of Claim alleging that Kemper did not told him that he would have to sign a non-competition agreement or an agreement to reimburse Kemper for training costs when he was informed that he was hired in or about December, 1992 and would start in the Grand Island office shortly. Jorgensen contended that Kemper postponed his starting date on various occasions until July 19, 1993 when he was first told that he was expected to agree to purported non-competition and training cost provisions. According to Jorgensen, it became increasing clear to him in and after October, 1993 that the Grand Island office was experiencing difficulty, that Kemper was not committed to the office and that the office would not survive. The closing of the office was allegedly announced in January, 1994. Jorgensen asserted that he did not want to work at another Kemper office in Hastings yet wished to work in Grand Island. The Respondent further asserted that Kemper's non-competition agreement and the training costs provision are unenforceable under Nebraska law. Finally, Jorgensen stated that he took no confidential information with him from Kemper.

### **RELIEF REQUESTED**

Claimant, Kemper Securities, Inc. requested an award in the amount of \$36,000.00 in actual damages as well as interest at the rate of 5% per annum from December 7, 1993 to date of payment, unknown damages resulting from the Respondent's alleged breach of agreement, costs and attorneys' fees.

Respondent, Bryon G. Jorgensen requested that the claim be dismissed in its entirety.

**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. Respondent, Bryon G. Jorgensen is hereby liable for and shall pay to the Claimant, Kemper Securities, Inc. the sum of \$5,310.00 in total damages. This amount represents the following costs and sums:

a.	Series 7 exam cost	\$150.00
b.	Series 63 exam cost	\$60.00
c.	Licensing fees	\$200.00
d.	Group I insurance	
	exam study materials	\$150.00
e.	Group I insurance	
	exam fee	\$75.00
f.	Insurance Licensing fee	\$75.00
g.	Airfare	\$400.00
h.	Accommodations for	
	four weeks	\$1,200.00
i.	Expense allowance	\$1,000.00
j.	Employee's salary for	
	one month	\$2,000.00
2. All other damages requested by Kemper Securities, Inc. are hereby denied in full; and
3. The parties shall bear their respective costs including attorneys' fees except for those costs specifically enumerated herein.

**FORUM FEES**

Forum fees are calculated at the rate of \$600.00 per hearing session and \$300.00 for each pre-hearing conference. There were two (2) hearing sessions x \$600.00 plus there were two (2) pre-hearing conferences x \$300.00 = \$1,800.00 in forum fees. Pursuant to Section 44(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 44(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$500.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$600.00 previously deposited with the NASD by the Claimant. Kemper Securities, Inc. is liable for and shall pay to the NASD the sum of \$300.00 in additional forum fees. Bryon G. Jorgensen is liable for and shall pay to the NASD the amount of \$900.00 in forum fees. The NASD shall retain postponement fees in the amount of \$600.00 previously deposited with the NASD by the Respondent. **Fees are payable to the National Association of Securities Dealers, Inc.**

Arbitrators Signatures

Dated:

Gregg Rzepczynski, Esq.  
Gregg Rzepczynski, Esq.  
Industry Arbitrator, Presiding Chair

August 30, 1995

Michael A. Rzewnicki  
Michael A. Rzewnicki  
Industry Arbitrator

August 30, 1995

Richard L. Mitchell -  
Richard L. Mitchell  
Industry Arbitrator

August 29, 1995

Date served by the NASD: August 30, 1995