

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Patricia Sara

and

94-01850

Name of Respondent

Kemper Securities Group, Inc.

REPRESENTATION OF PARTIES

Patricia Sara ("Claimant") was represented by David S. Acker, Esq., Williams Bay, Wisconsin.

Kemper Securities Group, Inc. ("Respondent") was represented by Paul J. Campbell, Esq. and Christopher Barber, Esq., Coffield Ungaretti & Harris, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about May 18, 1994. Submission Agreement of Claimant Patricia Sara was signed on May 1, 1994.

Statement of Answer was filed by Respondent Kemper Securities Group, Inc. on or about July 28, 1994. Submission Agreement of Respondent Kemper Securities Group, Inc. was signed on July 27, 1994 by Brad A. Busscher.

HEARING INFORMATION

The hearing was held on June 15, 1995 for two (2) sessions, June 16, 1995 for two (2) sessions, August 2, 1995 for two (2) sessions and Friday, September 1, 1995 for one (1) session in Chicago, Illinois for a total of seven (7) sessions.

CASE SUMMARY

Claimant alleged that Peter Lahti commenced on a course of conduct that made it impossible for the Claimant to perform her duties, creating a working environment that caused the Claimant serious

psychologic harm and attempted to undermine the confidence that brokers had in her. Mr. Lahti's alleged conduct included, but is not limited to:

- making lewd remarks personally offensive to Claimant;
- showing the Claimant lewd photographs of himself;
- flouting a dead animal in the Kemper Securities cafeteria;
- squelching Claimant's warning to brokers regarding the level of risk in certain products being brought to market by Kemper, and erasing a telephone conversation with the Claimant regarding the incident;
- undermining the Claimant's authority with her staff; and
- falsely reporting to Kemper personnel that the Claimant had resigned and blocking her efforts to seek alternative employment within Kemper organization.

Claimant also alleged that Kemper condoned and participated in the conduct of Lahti by:

- refusing to inform Kemper Securities personnel that the Claimant's position had been eliminated;
- telling the Claimant not to come to the office and informing others that the Claimant was on "sick leave" and prohibiting the Claimant from communicating with those individuals in order to seek alternative means of making a living;
- denying the Claimant access to her office and impounding personal records that thwarted the Claimant's search for alternative employment;
- refusing to deliver other personal property from the Claimant's office; and
- making false claims for alleged company property that is, in fact, Claimant's personal property.

Respondent denied the allegations set forth in the Statement of Claim and asserted the following affirmative defenses: the claim fails to state a claim or cause of action upon which relief can be granted; and the claim is barred by the applicable statute of limitations.

RELIEF REQUESTED

Claimant requested an award in the amount of \$1,000,000 plus costs of arbitration, exemplary damages in the amount of \$5,000,000, attorneys' fees and disbursements incurred in conjunction with this matter, and such further and additional relief as the arbitrators deem just and fair.

Respondent requested that the claims asserted against it be dismissed with prejudice that all fees and costs be assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Considering all of the evidence in the light most favorable to the Claimant, the panel finds that the Claimant has failed to prove all but one of the allegations contained in the Statement of Claim. The panel finds that Claimant has proven paragraph 7(d) of the Statement of Claim. However, the panel regards that matter as *de minimis* and therefore concludes no relief is appropriate on that count.

In light of the foregoing, the panel finds against the Claimant on all remaining counts. Moreover, because the Claimant has failed to meet her burden of proof on the remaining counts and because the Claimant by her own testimony has recanted a number of the allegations, the panel orders that the Claimant shall be responsible for all forum fees.

2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$1,500 per hearing session and \$300 for each prehearing conference, if any. There were **seven (7) sessions x \$1,500 = \$10,500 in forum fees**. Pursuant to §43(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 §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** and shall retain as forum fees the hearing session deposit in the amount of **\$1,500** previously deposited with the NASD by the Claimant Patricia Sara. Claimant Patricia Sara shall be and hereby is liable for and shall pay to the NASD the sum of \$9,000 as the balance due for forum fees.

Pursuant to §45 of the NASD Code of Arbitration Procedure, the NASD shall assess the non-refundable member surcharge in the amount of **\$200** against Respondent Kemper Securities Group, Inc.

The NASD shall **retain** postponement fees in the amount of \$1,000 previously deposited with the NASD by the Respondent Kemper Securities Group, Inc. **Fees are payable to the National Association of Securities Dealers, Inc.**

Concurring arbitrator's signatures

Dated:

/s/ Donald W. Cohen, Esq.

September 13, 1995

Donald W. Cohen, Esq.

Public Arbitrator, Presiding Chair

/s/ Robert Perkovich

September 22, 1995

Robert Perkovich

Public Arbitrator

/s/ Susan K. Franz

September 15, 1995

Susan K. Franz

Industry Arbitrator