

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Kemper Securities, Inc.

94-01893

Name of Respondent

Scott Andress

REPRESENTATION

For Claimant: Kemper Securities, Inc. ("Kemper") was represented by Michael A. Kraft, Esq. of Gomberg, Kane & Fischer, Ltd., located in Chicago, Illinois.

For Respondent: Scott Andress ("Andress") did not appear.

CASE INFORMATION

Statement of Claim filed: May 20, 1994.

Claimant's Submission Agreement signed on: May 17, 1994 by A. Brad Busscher, Vice President and Senior Counsel, Kemper Securities, Inc.

Respondent Andress did not file a Statement of Answer or an executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference:	None held.
Hearing Date/Sessions:	June 7, 1995 for One (1) session.
Hearing Location:	Southfield, Michigan

CASE SUMMARY

Kemper alleged that Andress failed to pay the balance due on a promissory note entered into as part of his employment with Kemper. Kemper specifically alleged that:

1. On June 17, 1992, Kemper and Andress, as part of Andress' employment with Kemper, entered into a promissory note. Pursuant to the terms of the Note, Andress was loaned the sum of \$40,000.00;
2. By the terms of the Note, Andress was obligated to repay the sum plus interest in one lump sum payment on June 1, 1995. The Note further provided that Kemper would forgive 1/3 of the principal balance due, plus interest, on each of the three anniversary dates of the Note, providing Andress remained in the full time employment of Kemper. The loan would become immediately due and payable upon the termination, for whatever reason, of Andress' employment with Kemper;
3. Andress' employment with Kemper was terminated on October 1, 1993, leaving a balance due on the Note of \$26,666.67, plus interest of \$459.90, which became due and payable. In addition, interest continued to accrue at the rate of 8% per annum;
4. On November 15, 1993 and December 22, 1993, Kemper tendered a demand to Andress for payment of the balance due. Andress refused to make payment.

RELIEF REQUESTED

Kemper requested entry of an award for damages in the sum of \$27,126.57 for the principal balance due under the note, plus interest, for the period while Andress was employed; \$1,302.32 for interest from October 1, 1993 to May 13, 1994; interest on the Note from May 13, 1994 to date of payment; the cost of collection, including attorneys' fees as agreed in the Agreement; and any other relief the Arbitrators deemed just.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Andress did not file an executed Submission Agreement or an answer. By letter dated May 16, 1995, Respondent Andress advised the NASD Arbitration Department that he would not

attend the hearing scheduled for June 7, 1995 and that an arbitration agreement did not exist between Kemper and Address. Kemper filed a response on June 2, 1995. The Panel reviewed all correspondence regarding the matter, heard argument from Kemper, and reviewed the evidence. Upon review of the parties agreement, the Form U-4 executed by Address, and the NASD Code of Arbitration Procedure, the panel determined that Respondent Address was required to submit to arbitration pursuant to Section 8 of the NASD Code of Arbitration Procedure. Furthermore, the panel determined that Respondent Address was properly served with the Statement of Claim and notice of the hearing required pursuant to the NASD Code of Arbitration Procedure. Therefore, the panel determined that the hearing would proceed in his absence pursuant to Section 29 of the NASD Code of Arbitration Procedure.

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 Scott Address is liable for and shall pay to Claimant Kemper Securities Inc. the sum of \$26,666.67, plus interest in the amount of \$4,045.66, for a total sum due of \$30,712.33;
2. In addition, Respondent Scott Address is liable for and shall pay to Claimant Kemper Securities, Inc. the sum of \$5,234.62 as attorneys' fees and costs. In deciding to award attorneys' fees, the Arbitrator considered the arguments presented by Kemper Securities, Inc., and the language of the third paragraph of the promissory note signed by Scott Address on June 17, 1992, and determined that authority existed for an award of attorneys' fees to Kemper Securities, Inc.;
- 3) Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) hearing session x \$600.00 per session = \$600.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 non-refundable claim filing fee and the Section 45 surcharge in the sum of \$200.00 previously paid by Claimant Kemper Securities, Inc. In addition, the NASD shall retain the \$600.00 hearing session deposit previously deposited by the Claimant, Kemper Securities, Inc. as payment of the forum fee. Respondent

Scott Andress is liable for and shall pay to the Claimant, Kemper Securities, Inc. the sum of \$1,100.00 as reimbursement of the claim filing fee and forum fee paid by the Claimant.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Omer E. Bellfi
Omer E. Bellfi
Industry Arbitrator
Chairperson

June 14, 1995

/s/ Thatcher W. Root
Thatcher W. Root
Industry Arbitrator

June 22, 1995

/s/ Larry C. Kreul
Larry C. Kreul
Industry Arbitrator

June 16, 1995

For NASD Use Only

Date of Decision: June 26, 1995