

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

James L. Roberts

and

94-01921

Name of Respondent

Kemper Securities, Inc., now known as
Everen Securities, Inc.

REPRESENTATION OF PARTIES

For Claimant: Claimant James L. Roberts ("Roberts") was represented by David S. Acker, Esq. of Williams Bay, Wisconsin.

For Respondent: Respondent Kemper Securities, Inc. ("Kemper"), now known as Everen Securities, Inc., was represented by Christopher J. Barber, Esq. and Lisa Janda Finks, Esq. of Ungaretti & Harris in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on: May 20, 1994.

Claimant's Submission Agreement signed on: May 19, 1994.

Statement of Answer filed by Kemper on or about: October 10, 1994.

Respondents Submission Agreement signed on: September 30, 1994 by Janet L. Reali, Executive Vice President and Corporate Counsel, Kemper Securities, Inc.

HEARING INFORMATION

Pre-Hearing Conferences: May 18, 1996 for One (1) Session before One (1) arbitrator;
June 24, 1996 for One (1) Session before One (1) arbitrator;
August 4, 1996 for One (1) Session before a full panel.

Hearing Dates/ Sessions: November 19, 1996 for Two (2) Sessions;
November 20, 1996 for Two (2) Sessions;

November 21, 1996 for Two (2) Sessions; and
March 11, 1997 for One (1) session.

Hearing Locations: Chicago, Illinois.

CASE SUMMARY

Roberts alleged tortious interference with prospective business advantage and that Kemper has failed to pay Roberts' compensation. Roberts specifically alleged that:

1. Roberts worked as Kemper's Eastern Region Executive Vice President of Corporate Finance in Milwaukee, Wisconsin. In October 1992, Kemper closed the Milwaukee Corporate Finance Department. Because of the office closing, Kemper greatly reduced Roberts' responsibilities;
2. In June 1993, after an aborted sale of Kemper Securities, Kemper promoted Roberts to head of the Corporate Finance Department;
3. Around eleven in the morning on September 17, 1994, Kemper's CEO, James Boris ("Boris") fired Roberts and told Roberts to complete his departure with the Human Resources department, advising that his severance package would be fair "as long as you don't ask for the balance sheet." At his meeting with Human Resources, Roberts accepted a severance payment of \$251,000.00;
4. Around 4:00 p.m. September 17, 1994, Roberts was advised that Boris had changed his mind and would not honor the agreement. Boris presented to Roberts a memo stating that Roberts had resigned and requesting that he stay with the firm. Roberts immediately responded by preparing a memorandum correcting the inaccuracies of Boris' memo;
5. Kemper has failed to pay Roberts for his 1993 personal revenue production, vacation pay, car payments, business expenses and damaged apartment property;
6. Additionally, Kemper improperly interfered with Roberts' ability to participate in Kemper's employee led buy-out.

Kemper denied the allegations set forth in the Statement of Claim. Kemper specifically alleged that:

1. Roberts voluntarily resigned and therefore, may not recover additional compensation;

2. Roberts may not recover for tortious interference with the proposed Kemper buy-out because legally, Kemper cannot 'interfere' with its own transactions. In addition, the proposal for the employee buy-out never passed from speculation to reality; and
3. In addition, Kemper asserted several affirmative defenses including laches, estoppel, failure to mitigate damages, waiver, statute of frauds, and that Roberts had failed to state a cause of action.

RELIEF REQUESTED

Claimant requested entry of an award of not less than \$663,000.00 with respect to his claim for employment compensation; a sum of not less than \$500,000.00 with respect to his claim for tortious interference; exemplary damages of \$5,000,000.00; and such other relief as the arbitrators deemed just and fair.

Respondent requested that the arbitrators deny Roberts any relief and dismiss his claims in full.

OTHER ISSUES CONSIDERED & DECIDED

After the hearing, Respondent Kemper requested that the Panel reopen the hearing to allow for examination of witnesses to rebut Roberts' post-hearing brief with accompanying affidavit. Roberts objected, but the Panel determined that the Motion would be granted and additional testimony was heard on March 11, 1997.

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 NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleading, the testimony, 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. Respondent Kemper Securities, Inc., now known as Everen Securities, Inc. is liable for and shall pay to James L. Roberts the sum of \$501,000.00 as compensatory damages;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and

3. Any relief not specifically granted is hereby denied.

FORUM FEES

Pursuant to §10332(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. Forum fees are calculated at the rate of \$ 1,500.00 per hearing session before a full panel and \$300 for each pre-hearing conference before One (1) arbitrator. There were eight (8) hearing sessions x \$1,500.00 (\$12,000.00) + Two (2) pre-hearing conferences x \$300.00 (\$600.00) = \$12,600.00 in forum fees.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution 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 \$ 1,500.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant. Claimant James L. Roberts is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the additional sum of 4,800.00 as forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200.00. In addition, Respondent Kemper Securities, Inc., now known as Everen Securities, Inc., is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$6,300.00 as forum fees.

Dated:

/s/ Peter A. Maren, Esq.
Peter A. Maren, Esq.
Industry Arbitrator, Presiding Chair

April 3, 1997

/s/ Gerald A. Grossman, Esq.
Gerald A. Grossman, Esq.
Industry Arbitrator

April 3, 1997

/s/ Thomas M. Lehner
Thomas M. Lehner
Industry Arbitrator

April 2, 1997