

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Willis and Mary Short

NASD Arbitration
No. 95-00557

Name of Respondent(s)

Kemper Securities, Inc.
Kemper Securities Group, Inc.
Bateman Eichler, Hill Richards Division
William L. Notrica

REPRESENTATION

For Claimants: Scott L. Metzger, Esq. and Leslie S. Akins, Esq.,
Duckor & Spradling, San Diego, California

For Respondents: Jon L. Rewinski, Esq. and Paul W. Poareo, Esq.,
Kindel & Anderson, Los Angeles, California

CASE INFORMATION

Statement of Claim filed: January 26, 1995

Claimants' Submission Agreements signed as follows:

Willis Short: February 22, 1995
Mary Short: February 21, 1995

Joint Statement of Answer filed by Respondents: May 17, 1995

Respondents' Submission Agreements signed as follows:

Kemper Securities Group, Inc. and Kemper Securities, Inc.
(also known as Bateman Eichler, Hill Richards, Inc. and
Bateman Eichler, Hill Richards Division): April 17, 1995
William L. Notrica: May 17, 1995

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

November 14, 1995 (one session)

Hearing Date(s)/Session(s): December 5, 1995 (two sessions)

December 6, 1995 (two sessions)

January 3, 1996 (two sessions)

January 25, 1996 (two sessions)

Hearing Location:

San Diego, California

CASE SUMMARY

Claimant Willis Short alleged that he explained to Respondents that he was inexperienced and naive in matters concerning all aspects of stocks, bonds and other securities investments; and that he had a fair amount of cash he wanted to invest, that he desired an interest rate slightly greater than that offered for certificates of deposit, but because he required these funds for his real estate business, conservation and protection of the principal was the primary goal. Claimants further alleged the following causes of action with respect to their investments in various securities: 1) Violation of Sections 10b and 20 of the Securities Exchange Act of 1934 and Rule 10-B5 of the Securities Exchange Commission; 2) Fraud, Intentional Misrepresentation and Omission of Material Fact; 3) Negligent Misrepresentation; 4) California Corporate Securities Fraud Sections 25401, 25501; 5) Breach of Fiduciary Duty - Against All Respondents; 6) Violation of New York Stock Exchange, Inc. Rules 342, 401 and 405 and National Association of Securities Dealers, Inc. (NASD) Rules of Fair Practice, Article III Section 2; 7) Negligence; 8) Breach of the Implied Covenant of Good Faith and Fair Dealing; and 9) Wrongful Denial of Existence of Contract.

Respondents denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Respondents alleged that Claimants chose their investments and decided when to sell; Claimants understood and had the financial means to accept the risks of their investments; and that there were no promises, assurances or guarantees. Respondents further alleged that there were no misrepresentations; all investments suggested by Mr.

Notrica were suitable and responsive to Claimants' express objectives; Mr. Short was capable of evaluating any recommendations as well as the prospectuses and other information he was given; and that Mr. Short knew the risks he was taking, and controlled the trading in his account. Respondents also asserted affirmative defenses:

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages equal to the amount of all losses suffered by Short, including interest at the legal rate thereon, plus lost interest and profits;
2. Return of all commissions and fees generated by Short's Kemper account;
3. Such other damages and/or method of calculating damages as deemed lawful and appropriate by the Arbitrators;
4. Punitive damages as deemed appropriate by the Arbitrators;
5. Costs and reasonable attorney's fees; and
6. Such other and further relief as the Arbitrators deem just and proper.

Respondents requested dismissal of Claimants' claims and requested costs.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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. All claims by Claimants, including the claim for punitive damages, are dismissed.

2. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$750.00 hearing session deposit previously deposited by the Claimants. Forum fees are to be split between the parties and are calculated as follows:


One pre-hearing session @ \$300.00/session	=	\$ 300.00
Eight hearing sessions @ \$750.00/session	=	<u>\$6,000.00</u>
Total fees assessed	=	\$6,300.00
Claimants' share (50%)	=	\$3,150.00
Credit for hearing deposit	=	\$ 750.00
Balance due	=	\$2,400.00
Respondents' share, jointly and severally (50%)	=	\$3,150.00
Balance due	=	\$3,150.00

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Harvey C. Flodin, Esq.	Public Arbitrator
James D. Knotter, Esq.	Public Arbitrator
Robert A. Yates	Industry Arbitrator

Concurring Arbitrators' Signatures



Harvey C. Flodin, Esq.

Date Served: 3/18/96

James D. Knotter, Esq.

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