

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

John Walker and Lisa Walker

95-00571

Names of Respondents

Kemper Securities, Inc.
Lovett Underwood Neuhaus & Webb, Inc.
Douglas B. Shaw and
Trevor D. Ling

REPRESENTATION

John and Lisa Walker ("Claimants") were represented by Woodrow Epperson, Esq., Sole Practitioner, located in Houston, TX.

Kemper Securities, Inc., Lovett Underwood Neuhaus & Webb, Inc., Douglas B. Shaw and Trevor D. Ling ("Respondents") were represented by A. Brad Busscher, Esq. of Everen Securities, Inc. (f/k/a Kemper Securities, Inc.) located in Chicago, IL.

CASE INFORMATION

The Statement of Claim was file on or about January 23, 1995.

The Claimants' Submission Agreement was signed on January 23, 1995.

The Statement of Answer was filed by all Respondents on or about May 26, 1995.

Respondent, Kemper Securities, Inc.'s Submission Agreement was signed on May 23, 1995 by A. Brad Busscher, Esq., Senior Vice President and Senior Counsel.

Respondent, Douglas D. Shaw's Submission Agreement was signed on May 24, 1995.

Respondent, Trevor D. Ling's Submission Agreement was signed on May 31, 1995.

HEARING INFORMATION

The hearing was held in Houston, TX on the following dates:

- February 6, 1996 for three (3) sessions

CASE SUMMARY

In the Statement of Claim, John and Lisa Walker ("Walker") alleged that the purported retirement plan they had purchased from the Respondents was merely a whole life insurance policy issued by MBL Life Assurance Corporation insuring the life of John Walker. The Claimants contended that the Respondents used a name or title for a policy which misrepresented the policy's true nature, misrepresented the terms and benefits of the policy and presented false information and advertising regarding the policy. The Claimants further contended that the Respondents made false and misleading representations concerning the rights, remedies or obligations under the policy of insurance issued by MBL Life Assurance Corporation by misrepresenting to the Walkers that they were buying a comprehensive retirement plan. The Claimants alleged that the representations made by the Respondents were false, misleading and deceptive in that Respondents knew that the life insurance policy was not a retirement plan at the time of the issuance of such policy. According to the Claim, the Walkers rescinded the contracts and made a demand for damages upon discovering that the plan was a life insurance policy, not a retirement plan; however, Respondents have failed to honor the Walkers' request. The Claimant contended that the acts of the Respondents constituted an unfair method of competition and unfair and deceptive acts or practices under Article 21.21 Section 4 of the Texas Insurance Code. The Claimants made other specific allegations against the Respondents including, but not limited to, breach of duty of good faith and fair dealing and violations of the Deceptive Trade Practices - Consumer Protection Act.

Respondents, Prudential Securities, Inc., Douglas B. Shaw and Trevor D. Ling denied the allegations of wrongdoing asserted by the Claimant. The Respondent alleged that the Claimants were not only provided documentation describing the insurance policy but also executed the insurance application and Claimant, John Walker was medically examined by a para-med. According to the Respondents, the Claimants had numerous discussions with the Respondents where the life insurance policy was discussed in detail. The Respondents maintained that although MBL was a top rated insurance company at the time of the Claimants' purchase, MBL entered conservatorship on or about July 16, 1991. The Respondents further maintained that while the Claimants were provided an opportunity to opt out of the program and mitigate their losses, Claimants executed an option to remain with the successor company to MBL and ratified their purchase of the life insurance policy. The Respondents asserted the following affirmative defenses:

1. Claimants failed to state a claim upon which relief can be granted.
2. Claimants failed to assert a claim under the Texas Deceptive Trade Practices Act.

3. Claimants failed to mitigate their alleged losses, if any.
4. Claimants' losses, if any, are the result of unforeseeable events and/or market conditions which are unrelated to any action or inaction of Respondents.
5. Respondents fully disclosed all information relative to Claimants' purchase of a whole life policy from MBL.
6. Claimants' claim is barred by the relevant statutes of limitation.
7. Claimants' claim is barred based on waiver, laches and estoppel.
8. Claimants' claim is barred since Claimants were contributorily/comparatively negligent.
9. Claimants have come into this proceeding with unclean hands since they have omitted to disclose numerous facts related to their claim.
10. Claimants failed to name a necessary and indispensable third party.

RELIEF REQUESTED

In their Claim, the Claimants requested an award in an undisclosed amount of actual damages as well as damages pursuant to the provisions of Section 17.50 (b)(1) of the Texas Commerce Code and Article 21.21 Section 16(b) of the Texas Insurance Code, interest, attorney's fees and costs.

Respondents requested that the Statement of Claim and all claims asserted against them be dismissed in their entirety and that they be awarded costs and attorney's fees.

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 original(s) remain on file with the NASD.

Respondent, Lovett Underwood Neuhaus & Webb, Inc. did not submit an executed Submission Agreement yet are required to participate in this arbitration in accordance with Section 8 of the Code of Arbitration Procedure and having answered the claim and appeared at the hearing are required to abide by the decision.

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. Respondents, Kemper Securities, Inc., Lovett Underwood Neuhaus & Webb, Inc., Douglas B. Shaw and Trevor D. Ling are hereby, jointly and severally, liable for and shall pay to the Claimants, John and Lisa Walker the sum of \$12,000.00 in compensatory damages;

2. All relief not specifically granted herein is hereby denied in its entirety; and
3. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

three (3) sessions X \$400.00 = \$1,200.00 in total forum fees

The National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable claim filing fee in the amount of \$120.00 and the hearing session deposit in the amount of \$400.00 which were previously submitted by Claimants, John and Lisa Walker. Respondents, Kemper Securities, Inc., Lovett Underwood Neuhaus & Webb, Inc., Douglas B. Shaw and Trevor D. Ling are hereby, jointly and severally, liable for and shall pay to the Claimants, John and Lisa Walker the sum of \$520.00 as reimbursement. Respondents, Kemper Securities, Inc., Lovett Underwood Neuhaus & Webb, Inc., Douglas B. Shaw and Trevor D. Ling are hereby, jointly and severally, liable for and shall pay to the NASD the amount of \$800.00 in additional forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

Patrick Lanier, Esq.

April 19, 1996

Patrick Lanier, Esq.

Public Arbitrator, Chairman

Richard A. Hollenberg, Esq.

April 18, 1996

Richard A. Hollenberg, Esq.

Public Arbitrator, Panelist

James G. Cooper

April 17, 1996

James G. Cooper

Industry Arbitrator, Panelist

Date served by the NASD: April 22, 1996