

**N.A.S.D. AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Kemper Securities, Inc.

NASD Arbitration  
#95-00681

vs.

Name of Respondent

Charles C. Ballard

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**REPRESENTATION**

For Claimant: Ronald P. Kane, Esq., Gomberg Kane & Fischer, Ltd., Chicago, Illinois

For Respondent: Rob J. Crichton, Esq., Keller Rohrback L.L.P., Seattle, Washington

**CASE INFORMATION**

Statement of Claim filed: February 9, 1995

Claimant's Submission Agreement signed: February 8, 1995

Statement of Answer filed: May 26, 1995

Counterclaim filed: January 31, 1996

Respondent's Submission Agreement signed: May 4, 1995

**HEARING INFORMATION**

The evidentiary hearing was held in Seattle, Washington, as follows:

June 18, 1996 - 2 sessions

June 19, 1996 - 2 sessions

### CASE SUMMARY

Claimant Kemper alleged Respondent Ballard breached the terms of a promissory note dated November 9, 1992, by failing and refusing to pay the outstanding sums due on the note which became due on the date Ballard terminated employment with Kemper.

Ballard asserted that no obligations under the note remained, as a result of the circumstances in the Seattle office of Kemper Securities when the announcement of the sale of Kemper was made. Ballard asserted a counterclaim for fraud, negligence and misrepresentations with respect to the recruitment of Ballard by Kemper. Ballard further asserted that Kemper breached its employment contract with Ballard by pursuing a course of conduct aimed at selling the assets of its securities business, which course of conduct ultimately resulted in a change of name for Kemper to Everen Securities and losing the marketability of its long tradition in the industry. Ballard further alleged Kemper failed to provide support for its Seattle office, and tortiously interfered with Ballard's prospective business. Ballard also alleged violation of the Washington Unfair Business Practices - Consumer Protection Act, RCW Chap. 19.86, by withholding the promissory note until after Ballard had transferred his accounts and commenced his employment with Kemper, thereby rendering Kemper liable for punitive damages and attorney's fees.

Kemper denied the allegations of the counterclaim, and asserted that the contentions of the counterclaim were factually and legally insupportable.

### RELIEF REQUESTED

Claimant requested the principal amount of the note, \$84,800, plus interest of \$18,784.15, plus attorney's fees of \$25,552 and costs of \$2,621.60. Claimant also requested dismissal of the counterclaim.

Respondent requested dismissal of all sums requested with respect to the note, and an award on the counterclaim of \$135,000.

### OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive counterpart 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. Respondent is liable for and shall pay to Claimant the sum of \$72,305 on the promissory note, plus interest on that amount at 9% per annum from May 14, 1994 to June 19, 1996, in the amount of \$13,647.60.

2. Respondent is liable for and shall pay to Claimant the sum of \$17,500 in attorney's fees and \$2,621.60 in costs, pursuant to the provisions of the promissory note dated November 9, 1992.

3. The counterclaim is dismissed in its entirety.

### FORUM FEE

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the NASD shall retain the \$500 non-refundable filing fee paid by each party.

Forum fees are assessed as follows:

Total fees:

4 hearing sessions @ \$750/session	\$3000
Kemper's one-half share	\$1500
Credit for deposit	<u>(500)</u>
Balance due	\$1000
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Ballard's one-half share	\$1500
Credit for deposit	<u>(750)</u>
Balance due	\$ 750
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Fees are payable to the NASD, Inc.

### ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Thomas D. Cochran	Industry
William J. Rex	Industry
Frank A. Pritchard, Jr.	Industry

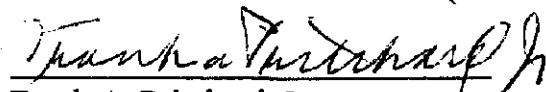
Concurring Arbitrators Signatures

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Thomas D. Cochran

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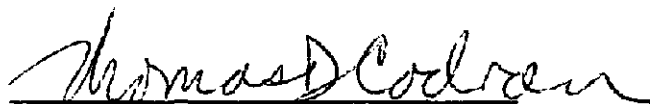
William J. Rex

  
Frank A. Pritchard, Jr.

Date of Decision: 7/19/96

Date Served: 7/15/96

Concurring Arbitrators Signatures



Thomas D. Cochran

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William J. Rex

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Frank A. Ditchard, Jr.

Date of Decision: \_\_\_\_\_

Date Served: 7/15/96

Concurring Arbitrators Signatures

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Thomas D. Cochran

X William J. Rex  
William J. Rex

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Frank A. Pritchard, Jr.

Date of Decision: 6-19-96

Date Served: 7/15/96