

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Mona L. Mulhollan

and

Case No. 95-00735

Names of Respondents

Bruce Fridley and Kemper Securities, Incorporated

REPRESENTATION

For Claimant, Mona L. Mulhollan: Walter T. Weathers, Jr., Esquire
Sole Practitioner
Houston, Texas

For Respondents, Bruce E. Fridley and Kemper Securities, Inc.: Renan Sugarman, Esquire
Everen Securities, Incorporated
Chicago, Illinois

CASE INFORMATION

The Statement of Claim was filed on or about: February 10, 1995

Claimant, Mona L. Mulhollan's Submission Agreement was signed on: February 9, 1995

The Statement of Answer filed by Bruce E. Fridley and Kemper Securities, Inc. on or about: April 12, 1995.

The Submission Agreement of Bruce E. Fridley was signed on April 10, 1998.

The Submission Agreement of Kemper Securities, Inc. was signed on April 11, 1995.

HEARING INFORMATION

The hearing was held on: February 17, 1998 for two (2) sessions;
February 18, 1998 for two (2) sessions;

March 16, 1998 for two (2) sessions;
March 17, 1998 for two (2) sessions; and
March 18, 1998 for two (2) sessions

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant Mulhollan ("Mulhollan"), a 50 year old, single person, opened an account with Eppler, Guerin & Turner, Inc in 1988 upon the advice of a close friend Steve Thomae ("Thomae") who also was a friend of Bruce E. Fridley ("Fridley"), the respondent broker herein. Mulhollan and Thomae maintained a close relationship until at least 1994 and remain friends today. Mulhollan had no prior experience with the stock market or securities. With an initial deposit of about \$60,000, the account was actively traded. In 1990, Fridley left Eppler, Guerin and joined the Cowan brokerage firm. The account was transferred with Fridley and continued to be actively traded. In 1993 Fridley left Cowan to join Kemper Securities ("Kemper"). The account was transferred with Fridley to Kemper Securities and had grown to about \$212,000.00. The account continued to be actively traded at Kemper Securities and by December 1994 had been reduced to \$11,650.39. The trading activity in the Kemper account was over \$1.9 Million Dollars.

Mulhollan claimed a lack of sophistication, unsuitability, reliance upon the broker Fridley and discretionary trading by the broker. Fridley had been given a discretionary power over the account at Kemper by Mulhollan at his request. Mulhollan also had independently opened an account at Trade Star/First Securities in 1991 and ultimately transferred the securities from that account to the Kemper Account. Some, but not all, of the Securities in the Trade Star account paralleled purchases and sales in the Kemper account. The trading activity in the Kemper account typically occurred in blocks of 1000 with a significant number of low priced securities and also included options and IPO's. In the Kemper account, many of the securities of the account were in markets made by Kemper. Claimant alleged a breach of fiduciary duty by the broker by making trades unsuitable for Mulhollan, misrepresentations and excessive trading (churning). Claimant alleged a failure by Kemper to supervise the broker Fridley with respect to the Mulhollan Account.

In answer to the claim, Respondents asserted that Mulhollan controlled and directed the trading including leveraging and margin. That the account documents reflect a margin account and speculative trading objectives. That during the period of activity, Mulhollan leased a portable stock quoting device at Thomae's request and used it to obtain quoted prices on securities, calculated her profits and losses and subscribed to an investment newspaper. Respondents maintained that Mulhollan had all the indicia of a sophisticated investor and was a knowledgeable trader and that the investments were suitable for her. Respondents maintained that there were no losses in the account

and Mulhollan did not take into account the prior gains and activity at other brokerage houses in calculating damages. Respondents alleged a failure to state a claim, statute of limitations, no right of action, failure to mitigate damages, contributory and/or comparative negligence; estoppel, waiver and ratification, and that damages were not controllable by Respondents. Respondents denied misrepresentations and/or omissions and asserted that the claim was barred by failure to exercise diligence with respect to her investments.

OTHER MATTERS

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

The parties agreed that the Award in this matter may be executed in counterpart copies and agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

RELIEF REQUESTED

Claimant requested entry of an award against the Respondent for net losses in the amount of approximately \$272,841.56, for margin interest and for a return on investment, as well as punitive damages.

Respondents requested that the claim be dismissed and that the Claimant take nothing.

AWARD

After considering the Complaint, the Answer, 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. That the Respondents, Bruce Fridley and Kemper Securities, Inc., are jointly and severally liable for and shall pay to Claimant, Mona L. Mulhollan, the sum of Ninety One Thousand Nine Hundred and Twelve Dollars (\$91,912.00) in complete satisfaction of her claims.
2. Simple interest at 8% per annum shall accrue on any amounts not paid within 30 days of the service date of the award.
3. With the exception of forum fees addressed below, any relief not specifically awarded is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session. There were ten (10) sessions x \$750.00 = \$7,500.00 in forum fees. Pursuant to Section 10332(b) of the NASD Code of Arbitration Procedure, 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.

Pursuant to Section 10332(c) of the Code, the National Association of Securities Dealers Regulation, Inc. Office of Dispute Resolution shall retain the claim filing fee in the amount of \$200.00 and shall retain as forum fees in the amount of \$750.00 previously paid by Claimant, Mona Mulhollan. Respondents, Kemper Securities, Inc. and Bruce Fridley are jointly and severally liable for and shall pay to Claimant, Mona Mulhollan the sum of \$950.00 as reimbursement of the claim filing fee and hearing session deposit. In addition, Respondents, Kemper Securities, Inc. and Bruce Fridley are liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$6,750.00 in forum fees.

Pursuant to Section 10319 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$750.00 postponement fee previously submitted by Claimant, Mona Mulhollan.

Pursuant to Section 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$350.00 member surcharge previously paid by Respondent, Kemper Securities, Inc.

Concurring Arbitrators' Signatures:

Donald H. Fidler, Esq.
Donald H. Fidler, Esq.
Public Arbitrator, Chairman

Date: April 21, 1998

James Hoefling
James Hoefling
Public Arbitrator, Panelist

Date: April 22, 1998

Larry J. Sklar
Larry J. Sklar
Industry Arbitrator, Panelist

Date: April 23, 1998

For NASD use only: Date served: April 30, 1998