

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

**In the Matter of the Arbitration Between**

**Name of Claimant/Counter-Respondent**

Kemper Securities, Inc.

95-00787

**Name of Respondent/Counter-Claimant**

Norman G. Eichhorn

**REPRESENTATION**

For Claimant/Counter-Respondent: Kemper Securities, Inc., now known as Everen Securities, Inc. ("Kemper"), was represented by A. Brad Busscher, Esq. of Everen Securities Inc., located in Chicago, Illinois.

For Respondent: Norman G. Eichhorn ("Eichhorn") was represented by Patrick J. Sherlock, Esq. of Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed: February 15, 1995.

Kemper's Submission Agreement signed on: February 14, 1995.

Statement of Answer filed by Eichhorn on: May 5, 1995.

Eichhorn's Submission Agreement signed on: May 5, 1995.

Eichhorn's Answer, Affirmative Defenses and Counterclaim filed: January 25, 1996.

Kemper's Response to the Counterclaim filed: March 25, 1996.

**HEARING INFORMATION**

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: April 2, 1996 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

**CASE SUMMARY**

Kemper alleged that Eichhorn failed to pay the sums due on a promissory note executed as part of his employment with Kemper. The Claim alleged that:

1. The parties voluntarily entered into a Promissory Note on September 1, 1992. Pursuant to terms of the Note, Eichhorn received a loan of \$60,000.00;
2. Pursuant to the terms, Eichhorn was to repay Kemper the sum in three equal annual payments on the anniversary date of the Note for the years 1993, 1994 and 1995. The Note further held that Kemper would forgive 1/3 the principal balance plus interest on the anniversary date, but only if Eichhorn was still employed by Kemper;
3. Eichhorn voluntarily resigned on September 15, 1994. According to the terms of the Note, the outstanding principal balance became immediately due and owing. In addition, interest continued to accrue;
4. Demand was made on Eichhorn to pay the sum due on the Note. Eichhorn refused and failed to pay the sum due.

Eichhorn denied owing any sums pursuant to the Claim, alleging that he was coerced into signing the Note after he had already moved his entire book of business to Kemper and that he did not voluntarily resign, but was constructively discharged. In addition, Eichhorn asserted a counterclaim, alleging that Kemper failed to pay him a promised sum for his duties as the "Mutual Fund Coordinator" and "Annuity Coordinator".

Kemper denied the allegations of the Counterclaim, alleging that Eichhorn was never entitled to any sums except his commission payout.

**RELIEF REQUESTED**

Kemper requested entry of an award against Eichhorn for the principal balance of the Note in the sum of \$20,000.00 plus interest; costs and attorneys' fees; and any other relief that Arbitrators deemed just. In addition, Kemper requested that the counterclaim be dismissed in its entirety.

Eichhorn requested that the Panel dismiss Kemper's claim. In addition, Eichhorn requested that the Panel enter an award against Kemper in a reasonable sum for the efforts he undertook as Mutual Fund Coordinator and Annuity Coordinator for an eighteen month period and for such further relief as the Panel deemed just.

### **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 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/Counter-Claimant Norman G. Eichhorn is liable for and shall pay to Claimant/Counter-Respondent Kemper Securities, Inc., now known as Everen Securities, Inc. the sum of \$26,462.34 as damages;
2. The counterclaim filed by Respondent/Counter-Claimant Norman G. Eichhorn against Claimant/Counter-Respondent Kemper Securities, Inc., now known as Everen Securities Inc., is dismissed with prejudice and denied in the entirety;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

### **OTHER COSTS**

The NASD shall retain the \$200.00 Section 45 surcharge paid by Claimant/Counter-Respondent Kemper Securities, Inc., now known as Everen Securities, Inc. In addition, the NASD shall retain the \$600.00 adjournment fee paid by Respondent/Counter-Claimant Norman G. Eichhorn.

**FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) hearing sessions x \$600.00 per hearing session = \$1,200.00 total forum fees.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 non-refundable claim filing fee and refund the \$600.00 hearing session deposit previously deposited by the Claimant, Counter-Respondent Kemper Securities, Inc., now known as Everen Securities, Inc. In addition, the NASD shall retain the \$600.00 hearing session deposit previously deposited by Respondent/Counter-Claimant Norman G. Eichhorn as a forum fee. Furthermore, Respondent/Counter-Claimant Norman G. Eichhorn is liable for and shall pay to the NASD the \$500.00 claim filing fee due pursuant to Section 44 for the filing of the counterclaim and an additional forum fee of \$600.00.

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

**Concurring Arbitrators' Signatures**

**Name**

**Date**

/s/ Daniel C. Kriser  
Daniel C. Kriser  
Industry Arbitrator  
Chairperson

June 7, 1996

/s/ Wade J. McGee  
Wade J. McGee  
Industry Arbitrator

June 10, 1996

/s/ Robert Biondi  
Robert Biondi  
Industry Arbitrator

June 7, 1996

**For NASD Use Only**

**Date of Decision: June 10, 1996**