

NASDR AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Martin Logan, an individual and
Martin Logan and Koren Logan,
as Trustees for The Logan Inter Vivos Trust

Claimants

v.

NASDR Arbitration
No. 95-00796

Kemper Securities
Milton Barnes

Respondents

REPRESENTATION OF PARTIES

Martin Logan, an individual and Martin Logan and Koren Logan, as Trustees for The Logan Inter Vivos Trust ("**Claimants**") was represented by Robert L. Gonser, Esq., Resolution Law Group, Orinda, California.

Kemper Securities was represented by Philip A. McLeod, Esq., Keesal Young & Logan, San Francisco, California.

Milton Barnes was represented by Frank Lewis, Esq., Began Lewis Mark & Wolfe, Phoenix, Arizona.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about February 13, 1995. Claimant's Submission Agreement was signed on March 13, 1995.

The Statement of Answer for Respondent Kemper Securities was filed on or about June 5, 1995. Respondent Submission Agreement of Kemper Securities was signed on June 2, 1994.

The Statement of Answer for Respondent Milton R. Barnes was filed on or about May 31, 1995. The Submission Agreement for Milton R. Barnes was signed on May 30, 1995.

HEARING INFORMATION

A telephonic pre-hearing conference was held on June 13, 1996.

The hearing was held in San Francisco California on the following dates;

July 15, 1996	2 sessions,
July 16, 1996	2 sessions,
July 17, 1996	2 sessions.

CASE SUMMARY

Claimants allege that Respondents engaged in a pattern of negligent misrepresentation, professional negligence, breach of fiduciary duty, conversion, and churning. Claimants further alleged the Respondents violated the Elder Abuse and Dependent Adult Civil Protection Act and the NASDR and NYSE "Know Your Customer" rules.

Kemper Securities ("Kemper") denied the allegations set forth in the Statement of Claim. Kemper specifically argued that the activity in the Claimants account was consistent with their investment objectives. Kemper further argued that its supervisors regularly reviewed the Claimants account and that Claimants were sent several letters asking them to confirm that the account was being handled in accordance with their objectives and that the Claimants signed and returned these letters.

Milton Barnes ("Barnes") denied the allegations set forth in the Statement of Claim. Barnes specifically argued that he was not the registered representative in control of the Claimants account and that it was another representative who had made all the recommendations and trades for the Claimants. Additionally, Barnes denied that he in any way concealed wrongful acts or hindered any recovery efforts made by the Claimants.

RELIEF REQUESTED

Claimants requested an unspecified amount of compensatory damages and \$1,000,000 in punitive damages. Claimants additionally requested interest, disgorgement of commissions and margin interest, treble damages and attorneys' fees and costs.

Both Respondents requested that the claims asserted against them be denied in its entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASDR.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Each and every claim of the Claimant is dismissed.
2. Claimant's request for punitive damages is denied.
3. Each side to bear their own costs and attorneys' fees.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each prehearing conference, if any. There were 6 sessions x \$1,000 = \$6000, plus 1 pre-hearing conference x \$300=\$300 for a total of \$6,300 in forum fees. Pursuant to §43(b) of the NASDR Code of Arbitration Procedure (the "Code"), 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 § 43(c) of the Code of Arbitration Procedure, Respondents Kemper and Barnes shall divide the forum fees jointly and severally.

Total Fees	
6 Hearing Sessions @ \$1,000.00 =	\$6,000.00
1 Pre-hearing Conference @ \$300=	\$ 300.00
Total	\$6,300.00
Claimant's credit for deposit	<u>\$1,300.00</u>
Claimant's balance < refund >	< \$1,300.00 >
Respondents credit for deposit	<u>\$ -0.00-</u>
Respondent joint and	
several balance	\$6,300.00

Pursuant to §43(c) of the Code, the NASDR shall **retain** the non-refundable filing fee in the amount of \$250 and shall **refund** as forum fees the hearing session deposit in the amount of \$1,000 and \$300 in overpayment previously deposited with the NASDR by the Claimant Martin Logan, an individual and Martin Logan and Koren Logan, as Trustees for The Logan Inter Vivos Trust.

Pursuant to §45 of the Code, the NASDR shall retain the member surcharge fee in the amount of \$500 previously paid by Kemper Securities.

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

Dated:

Helen B. Culiner
Helen B. Culiner, Esq.
Public Arbitrator, Presiding Chair

Peter H. Daly
Public Arbitrator

Anne Hennegar
Industry Arbitrator

Date Served: 09-05-96

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

Dated:

Helen B. Culiner, Esq.
Public Arbitrator, Presiding Chair



Peter H. Daly
Public Arbitrator

Anne Hennegar
Industry Arbitrator


3/24/96

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

Dated:

Helen B. Culiner, Esq.
Public Arbitrator, Presiding Chair

Peter H. Daly
Public Arbitrator


Anne Hennegar
Industry Arbitrator

8/24/26
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