

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimants**

James E. Street, individually, and as Trustee  
for James E. Street, DBPP

95-01171

**Name of Respondents**

Lovett Underwood Neuhaus & Webb, Inc.;  
Kemper Securities, Inc.;  
Peter J. Cammarano

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**REPRESENTATION**

For Claimant: James E. Street ("Street"), individually and as trustee for James S. Street, DBPP, was represented by William S. Shepherd, Esq. of William S. Shepherd & Associates, P.A., located in Houston, Texas.

For Respondents: Kemper Securities, Inc. (now known as Everen Securities Incorporated) and Lovett Underwood Neuhaus & Webb, Inc. ("collectively known as Kemper") were represented by A. Brad Busscher, Esq. of Everen Securities Inc.

Peter J. Cammarano ("Cammarano") was represented by James S. Annelin, Esq. of Annelin & Gaskin, located in The Woodlands, Texas.

**CASE INFORMATION**

Statement of Claim filed: March 7, 1995

Claimant's Submission Agreement signed on: January 8, 1995.

First Amended Statement of Claim filed: May 23, 1995.

Statement of Answer filed by Respondent Kemper on: May 9, 1995.

Respondent Kemper's Submission Agreement signed on: May 9, 1995 by A. Brad Busscher, Senior Vice President and Senior Attorney, Kemper Securities, Inc., successor by merger to Lovett, Underwood, Neuhaus & Webb, Inc.

Kemper's Reply to the First Amended Statement of Claim filed: June 7, 1995.

Respondent Cammarano's Statement of Answer filed: April 24, 1995.

Respondent Cammarano's Submission Agreement signed on: April 21, 1995.  
Cammarano's First Amended Statement of Answer filed: June 6, 1995.

### **HEARING INFORMATION**

Pre-Hearing Conference: None Held.  
Hearing Dates/Sessions: December 12, 1995 for Two (2) sessions; and  
December 13, 1995 for Two (2) sessions.  
Hearing Location: Houston, Texas.

### **CASE SUMMARY**

Claimant alleged that Respondent Cammarano, while employed by or acting as an agent for Respondent Kemper, misrepresented the investment qualities of the Krupp Government Interest Trust and induced Claimant to purchase the securities. The dividends for the fund were later cut and when Street attempted to liquidate, he learned that the value was not assured as represented.

Based upon these allegations, Street asserted claims for breach of contract and warranties; violation of the Texas Deceptive Trade Practices Act ("DTPA"); violation of the Federal Securities Exchange Act; violation of New York Stock Exchange and National Association of Securities Dealers rules; violation of the Texas Securities statutes; violation of Section 27.01 of the Texas Business and Commerce Code; breach of fiduciary duty; negligence and other common law claims.

Respondent Kemper denied the material allegations of the Claim, asserting that at the time of purchase, Street was provided the Krupp Fund Prospectus which fully disclosed the investment objectives and risks of the fund. In addition, the fund paid Street dividends totaling in excess of \$42,000 from July 1990 through March 1993 which Claimant reinvested. Beginning in or about March 1993, the Claimant journaled the investment from the pension plan account to his IRA rollover account and the fund paid additional dividends in excess of \$31,000. Pursuant to documents received from the Fund, Street had not liquidated the account and was receiving dividends as late as February, 1995. In addition, Kemper asserted several affirmative defenses, including:

1. Claimant has failed to state a claim upon which relief can be granted;
2. The claims are barred by the relevant statutes of limitations, laches, ratification, waiver and estoppel;
3. The claims are barred because the Claimant was contributorily/comparatively negligent; and,
4. The Claimant has failed to state a claim under the DTPA.

Respondent Cammarano denied the material allegations of the Claim, alleging that:

1. Street's Keough account still owns the shares and is receiving cash quarterly payments of more than \$3,000.00 per quarter;
2. At the time of filing, 95% of the assets of the Fund were invested in mortgages insured by FHA, GNMA, FNMA or FHLMA. There were no derivatives or similar securities in the Trust; and,
3. Street has attempted to create artificial losses by transferring the shares from his retirement plan to his Keough.

In addition, Cammarano asserted several affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested entry of an award, jointly and severally, against Respondents for an aggregate sum no greater than \$100,000.00, representing actual damages; treble damages under the DTPA; and costs, including reasonable attorneys fees. In addition, Street requested pre- and post-award interest computed on the maximum rate allowed by law and for any other relief available to the Panel.

Respondent Kemper requested that all Claims asserted against them be summarily dismissed and that they be awarded their reasonable attorneys' fees and all costs and expenses incurred in the defense of the arbitration.

Respondent Cammarano requested that the claims be denied and that he be awarded his reasonable and necessary attorneys fees, as well as any other relief he showed himself entitled.

### **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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim and all amendments are hereby dismissed with prejudice and denied in their entirety;

2. The parties shall bear their own costs, including attorneys' fees, except for those specifically enumerated herein; and

3. Any relief not specifically awarded is hereby denied.

### OTHER COSTS

The NASD shall refund the \$200.00 Section 45 surcharge payment erroneously made by Respondent Peter J. Cammarano.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) hearing sessions x \$500.00 per session = \$2,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$150.00 non-refundable claim filing fee and the \$500.00 hearing session deposit previously deposited by the Claimant, James E. Street, individually and as trustee of the James E. Street, DBPP. In addition, Claimant James E. Street, individually and as trustee of the James E. Street, DBPP is liable for and shall pay to the NASD an additional \$500.00 as forum fees. Furthermore, Respondents Lovett Underwood Neuhaus & Webb, Inc., Kemper Securities, Inc. (now known as Everen Securities, Inc.) and Petter J. Cammarano are jointly and severally liable for and shall pay to the NASD the sum of \$1,000.00 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

#### Concurring Arbitrators' Signatures

Name

Date

/s/ Gordon W. Hall, Esq.  
Gordon W. Hall, Esq.  
Public Arbitrator  
Chairperson

May 17, 1996

/s/ Irving Pozmantier  
Irving Pozmantier  
Public Arbitrator

May 19, 1996

/s/ Arthur L. Kieval  
Arthur L. Kieval  
Industry Arbitrator

May 17, 1996

For NASD Use Only

Date of Decision: May 20, 1996