

## NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

George K. Baum & Company,  
Claimant,

v. No. 95-03604

Risdan DePaul Kasper,  
Respondent.

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### REPRESENTATION OF PARTIES

George K. Baum & Company ("**Claimant**") was represented by W. Perry Brandt, Esq. and Anthony Durone, Esq. of Stinson, Mag & Fizzell, Kansas City, Missouri.

Risdan DePaul Kasper ("**Respondent**") was represented by Lee M. Smithyman, Esq., of Smithyman & Zakoura, Chartered, Overland Park, Kansas.

### CASE INFORMATION

Claimant's Statement of Claim was filed on or about July 25, 1995. Claimant's Submission Agreement was signed on July 21, 1995. Claimant's Reply to Affirmative Defenses was filed on or about October 11, 1995. On or about March 27, 1996, Claimant filed its Amended Reply and Further Response to Affirmative Defenses.

Respondent's Statement of Answer was filed on or about September 22, 1995. Respondent's Submission Agreement was signed on August 14, 1995.

### HEARING INFORMATION

The hearing was held on April 15, 1996 in Kansas City, Missouri for a total of two (2) sessions.

### CASE SUMMARY

Claimant alleged that on or about March 16, 1993, Respondent executed a Promissory Note (the "Note") in favor of the Claimant in the amount of \$60,000. The March 16, 1993 Note, pursuant to a February 12, 1993 letter agreement, modified and in certain respects, superseded a prior employment agreement dated January 1, 1992. Under the terms of the Note: Respondent was

to repay this funds in three equal annual installments on October 29, 1993, October 28, 1994, and October 27, 1995 together with interest at the rate of 4.5% per annum; in the event Respondent ceased to be employed by Claimant, Claimant, at its option, could declare the remaining balance immediately due and payable in full; as long as Respondent remained employed, Claimant would forgive the amount of principal and interest due on the principal payment date; and Respondent agreed to pay Claimant's reasonable attorneys' fees incurred in any action to collect under the Note. Claimant further stated that Respondent left its employ on or about May 12, 1995, and Claimant declared the final payment became immediately due and payable. Claimant stated that it had made demand to Respondent for payment in full of the amount due and owing, but he has failed and refused to pay same. Claimant denied each and every allegation contained in the affirmative defenses and allegations supporting affirmative defenses asserted by the Respondent.

Unless otherwise admitted therein, Respondent denied the allegations set forth in the Statement of Claim. Respondent also asserted the following affirmative defenses: Employment by Claimant and promises relating to the payment of \$60,000 and execution of the Note were subject to a series of false statements and misrepresentations; the Note was executed under Duress; the Note was subject to a failure of consideration; and respondents claimed a right of set-off against any alleged remaining obligation on the Note.

#### **RELIEF REQUESTED**

Claimant requested an award in its favor as follows: the principal sum of \$20,000; interest to date of \$663.28; interest until the date of the award at the rate of 4.5% per annum; and reasonable attorneys' fees incurred in this proceeding.

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

#### **OTHER ISSUES CONSIDERED & DECIDED**

On or about October 2, 1995, Claimant filed a Motion to Preclude Respondent's Answer. On or about October 4, 1995, Respondent filed a Memorandum in opposition to Claimant's Motion to Preclude. Claimant filed a Reply to Respondent's Memorandum on or about October 11, 1995. After review of the motion and responses from the parties, the undersigned arbitrator denied Claimant's Motion to Preclude.

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 NASD.

**AWARD**

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

Respondent Riden DePaul Kasper is liable for, and shall pay to the Claimant, George K. Baum & Co. as follows: (1) On the Promissory Note, the sum of \$9,848.21; and (2) reasonable attorneys' fees of \$5,000.

Each party shall bear equally the forum fees assessed by the NASD.

All claims for relief/requests for damages not specifically covered herein are, and each of them, denied with prejudice.

**FORUM FEES**

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$600 = \$1,200 in forum fees. Pursuant to §44(b) of the NASD 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 §44(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$600 previously deposited with the NASD by the Claimant.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 previously paid by the Claimant.

Additional forum fees in the amount of \$600 are assessed against the Respondent.

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

Dated:

Joseph M. Rebein

/s/

May 21, 1996

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Joseph M. Rebein  
Industry Arbitrator, Presiding Chair