

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Donald G. Costar

95-04229

Name of Respondents

Kemper Securities, Inc.
Donald A. Bernard, Sr.
Donald A. Bernard, Jr.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 5, 1995, Claimant Donald G. Costar ("Claimant"), alleged that Respondent Kemper Securities, Inc. ("Kemper"), through its account executives, Donald A. Bernard, Sr. ("Bernard, Sr.") and Donald A. Bernard, Jr. ("Bernard, Jr."), gave him poor investment advice. Claimant further alleged that he engaged Bernard, Sr. to consolidate, inventory and manage the securities of the estate for which he served as Executor but Bernard, Sr. proposed that his son, Bernard, Jr., manage the account to gain experience. Claimant contended that Bernard, Jr., mismanaged the account when he prematurely liquidated the estate securities and deposited the funds into a low interest Kemper money-market account. Claimant further contended that Bernard, Jr. and Bernard, Sr. created a scheme whereby he was to convince the heirs of the estate to accept shares of a mutual fund in lieu of cash. Claimant alleged that Bernard, Jr. and Bernard, Sr., recommended a mutual fund but failed to disclose that the estate would lose money and the details of the purchase. Claimant further alleged that as a result of the wrongdoing of the Respondents, he has suffered a loss for which the Respondents should be held liable.

Respondents Kemper Securities, Inc., Donald A. Bernard, Sr., and Donald A. Bernard, Jr., maintained that Claimant is an investor who, through 20/20 hindsight, now rues his initial investment decision. Respondents further maintained that Claimant constantly complained about the inadequate yield from the money market and specifically requested that they provide investment alternatives to achieve a higher yield. Respondents contended that they provided Claimant with a variety of alternatives but that he, himself, selected an investment in the Franklin U.S. Government Fund after full disclosure. Respondents further contended that it was Claimant's intention to distribute shares of the fund to the Estate beneficiaries. Respondents maintained that when Claimant clearly violated his fiduciary obligations and was required to repay losses to the Estate, he falsely transferred the blame to them. Respondents further maintained that they committed no wrongdoing, and therefore, should not be held liable.

RELIEF REQUESTED

Claimant Donald G. Costar, requested \$5,748.12 in actual damages, plus \$1,266.74 in punitive damages, interest and attorneys' fees.

Respondents Kemper Securities, Inc., Donald A. Bernard, Sr., and Donald A. Bernard, Jr., requested that the claims of the Claimant be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The Arbitrator reviewed and considered the additional submissions filed by Claimant Donald G. Costar on February 9, 1996, and by Respondent Kemper Securities, Inc. on February 16, 1996, prior to his determination on the merits. The Arbitrator denied Respondent Kemper Securities, Inc.'s request to submit additional information, after deciding that no further response is necessary.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Thomas J. LoSavio, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Donald G. Costar, on August 24, 1995, and by the Respondent Kemper Securities, Inc., on October 23, 1995, by Respondent Donald A. Bernard, Sr., on September 25, 1995, and by Respondent Donald A. Bernard, Jr., on September 25, 1995. And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Kemper Securities, Inc., Donald A. Bernard, Sr., and Donald A. Bernard, Jr., are jointly and severally liable, and shall pay to the Claimant Donald G. Costar, \$2,874.06 in actual damages.
2. Respondents Kemper Securities, Inc., Donald A. Bernard, Sr., and Donald A. Bernard, Jr., are jointly and severally liable, and shall pay to the Claimant Donald G. Costar, simple interest at the rate of 10% per annum from April 19, 1993 until the date of payment of the award.
3. The parties shall bear their respective costs and attorneys' fees.
4. All other relief requests are denied.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Donald A. Costar, shall be retained by the NASD, Inc. Respondents Kemper Securities, Inc., Donald A. Bernard, Sr., and Donald A. Bernard, Jr., shall pay to the Claimant Donald G. Costar, \$75.00 as reimbursement for one-half of the filing fee.

AFFIRMATION

STATE OF California

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} ss:

COUNTY OF SAN FRANCISCO

I, Thomas S. LaSalle, do hereby affirm upon my oath as arbitrator that I am
the individual described herein and who executed this instrument, which is my oath and award.

Signature of Arbitrator

DATE OF DECISION: March 28, 1996