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In the Matter of the Arbitration Between

Name of Claimant(s)

GKN Securities Corporation

95-04867

Name of Respondent(s)

Anthony Lekanides

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**REPRESENTATION**

For Claimant GKN Securities Corporation ("Claimant") appeared Katherine Nathan, Esq., General Counsel for GKN Securities Corporation located in New York, New York.

Respondent Anthony Lekanides ("Respondent") did not appear at the hearing.

**CASE INFORMATION**

Statement of Claim filed on: October 13, 1995.

Claimant's Submission Agreement signed on: October 2, 1995.

Respondent did not file a Statement of Answer or a Submission Agreement.

**HEARING INFORMATION**

Hearing Date/Sessions: August 6, 1996 - 1 session

Hearing Location: The hearing was held at the offices of NASD Regulation, Inc. located in New York, New York.

**CASE SUMMARY**

Claimant alleged that on December 13, 1994, Respondent commenced employment as a registered representative for Claimant and entered into an Association Agreement with it. Claimant further alleged that pursuant to the terms of the Association Agreement, Respondent agreed to repay it for certain expenses and to indemnify it for unsecured customer debits. Claimant also alleged that expenses and/or unsecured customer debits covered by the Association Agreement resulted in a debit of \$2,196.93. Claimant asserted that on or about December 20, 1994, Respondent received an advance of \$8,000.00 and signed a promissory note for that amount. Claimant contended that pursuant to the terms of the promissory note, the full amount of the note would become immediately due and payable should Respondent's employment with Claimant terminate for any reason prior to December 20, 1996. Claimant further contended that Respondent's employment terminated on or about March 23, 1995. Claimant

contended that despite its demand, Respondent has failed to repay the full amount owed.

Respondent Anthony Lekanides did not file a Statement of Answer.

### **RELIEF REQUESTED**

Claimant requested \$10,196.93 together with interest, costs and attorneys' fees.

Respondent did not file a Statement of Answer.

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

The Arbitrator made the following rulings concerning Respondent Anthony Lekanides who did not file a Statement of Answer or a Submission Agreement and also failed to appear at the hearing conducted in this matter without obtaining an adjournment thereof:

1. Pursuant to Section 10101 of the NASD Code of Arbitration Procedure ("Code"), the Arbitrator found subject matter jurisdiction over this entire controversy.
2. The Arbitrator found that Respondent Anthony Lekanides was a person associated with a member of the NASD at the time the controversy arose. Consequently, the Arbitrator found personal jurisdiction over Respondent pursuant to Section 10201 of the Code.
3. In view of (2) above, the Arbitrator found that Respondent Anthony Lekanides was required to file with the NASD a Statement of Answer and a properly executed Submission Agreement pursuant to Section 10314(b) of the Code. In this regard, the Arbitrator found that the Statement of Claim was properly served upon Respondent Anthony Lekanides pursuant to Section 10314(a) of the Code.
4. In addition, in accordance with Sections 10310, 10315, and 10318 of the Code, the Arbitrator found that the NASD provided Respondent Anthony Lekanides with "due notice" of the hearing conducted in this matter by regular and certified mail. The Arbitrator, therefore, determined to proceed with the hearing without Respondent Anthony Lekanides, whose absence was unexcused.

### **AWARD**

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

1. All claims against Respondent Anthony Lekanides be and hereby are denied.
2. The parties shall bear their respective costs, including attorney's fees.
3. All other claims be and hereby are denied.

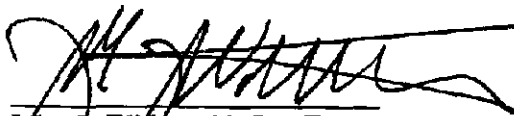
### FORUM FEES

Pursuant to Section 10205 of the Code of Arbitration Procedure, the Arbitrator has determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee previously deposited by the Claimant, and has assessed the following forum fee:

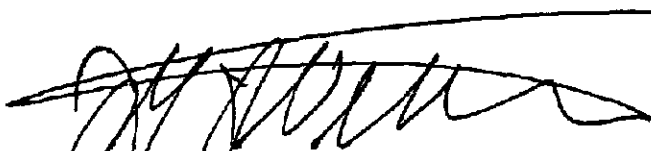
1 hearing session x \$300.00	=	\$300.00
less \$300.00 deposit	=	\$300.00
Total outstanding	=	\$0.00

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURE

  
John J. Witkowski, Jr., Esq.

I, John J. Witkowski, Jr., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
John J. Witkowski, Jr., Esq.

DATE OF DECISION: Feb 12, 1997

## N.A.S.D. AWARD

### NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

**Name of Claimant**

Robert S. Copeland

Case Number 95-04869

**Name of Respondents**

Smith Barney, Inc.  
Louis Leogrande, Jr.

**Name of Third-Party Respondent**

Dean Witter Reynolds, Inc.

**REPRESENTATION**

For Claimant Robert S. Copeland (hereinafter referred to as "claimant" or "Copeland") and Dean Witter Reynolds, Inc. (hereinafter referred to as "Dean Witter" or "third-party respondent") appeared James L. Sonneborn, Esq., Syracuse, New York.

For Respondents Smith Barney, Inc. ("Smith Barney") and Louis Leogrande, Jr. ("Leogrande") (hereinafter collectively referred to as "respondents") appeared M. J. MacKenzie, Esq. with the law firm Harris Beach & Wilcox, Syracuse, New York.

**CASE INFORMATION**

The Statement of Claim was filed on October 12, 1995. Claimant's submission agreement was executed on October 24, 1995.

Respondents' Statement of Answer, Counterclaim and Third-Party Claim was filed on November 4, 1995. Respondent Smith Barney's submission agreement was executed by Michael Steckler,

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resident Manager of the Utica branch of Smith Barney, Inc., on November 6, 1995. Respondent Leogrande's submission agreement was executed on November 6, 1995.

Claimant's reply to the counterclaims and Third-Party Respondent Dean Witter's response to the Third-Party claim was filed on November 27, 1995. A submission agreement was executed by Ralph Schiaro, a Vice President for Dean Witter on November 27, 1995.

#### **HEARING INFORMATION**

Hearing Dates/ Sessions:	December 4, 1995	-	Three Sessions
	December 5, 1995	-	Three Sessions
	December 6, 1995	-	Three Sessions

The hearings were conducted at the Albany Marriott and the Desmond Americana Hotel both located in Albany, New York.

#### **CASE SUMMARY**

Claimant had been employed as a registered representative with respondent Smith Barney until April 7, 1995, at which time he allegedly resigned his position to work for a competing firm, Dean Witter. Claimant alleged that respondent Leogrande, individually and as successor to Smith Barney, commenced an action in state court alleging claims against claimant arising out of the termination of his employment with Smith Barney and seeking injunctive relief to prevent claimant from doing business with his clients. As a result, claimant was allegedly forced to oppose an Order to Show Cause, retain an attorney, and expend monies. Claimant alleged that in so doing, respondent Leogrande engaged in unfair trade practices and has repeatedly defamed claimant in an effort to restrain customers from exercising their right to choose a broker.

Respondents Smith Barney and Leogrande denied all allegations of wrongdoing asserted by claimant in the statement of claim. As affirmative defenses, respondents maintained that CPLR Section 7502 specifically grants the New York State Supreme Court the authority to issue a preliminary injunction pending arbitration, therefore, respondents properly applied for this relief. Additionally, respondents maintained, claimant's claims for defamation are barred because any statements made by respondent Leogrande had a legitimate business purpose; that all statements made by respondent Leogrande are true; and that the veracity of these statements is a complete defense to any claim for defamation.

Counterclaimant and third-party claimant Leogrande maintained that by virtue of claimant's employment at Smith Barney, he gained access to the books and records of Smith Barney, the confidential information contained therein, and the identity of Leogrande's customers. In addition, claimant acquired trade secrets and proprietary information of Smith Barney which included the computer software and records which revealed the names, addresses and financial

information of Leogrande's actual and potential accounts. Leogrande alleged that Copeland executed an Employment Compliance Agreement dated March 2, 1992 and a Personal Computer Guidelines Agreement whereby he agreed that all account information is the property of Smith Barney and must remain in the branch.

Leogrande further alleged that on April 7, 1995, Copeland terminated his employment with Smith Barney without prior notice and immediately began working for Dean Witter. While in the employ of Smith Barney, and continuing thereafter, Copeland allegedly engaged in the removal and conversion of original and/or copies and/or reproductions of Smith Barney documents containing confidential Leogrande business records; transmitting to Dean Witter Leogrande's clients' names and addresses and other information; and solicited and prepared to solicit Leogrande's clients to terminate their relationship with Smith Barney and transfer their accounts to Dean Witter.

Leogrande contended that Copeland's conduct was in furtherance of a scheme to obtain and convert the records of Smith Barney and Leogrande to his own use. Leogrande allegedly lost approximately 184 accounts and more than \$6.5 million in assets by virtue of Copeland's alleged theft of Smith Barney software and Leogrande's confidential client information. approximately 184 acc  
thrift of Smith Barney

In reply to the counterclaim asserted against him, Copeland maintained that in July of 1990, it was allegedly suggested that Leogrande and Copeland bring their respective books of business together to form a partnership. Leogrande and Copeland allegedly formed such a partnership and agreed to share all of the commissions with two-thirds going to Leogrande and one-third to Copeland. Copeland denied that he removed confidential business records belonging to Leogrande and denied maintaining that he merely solicited individuals who he had served when he had been a partner with Leogrande and asked them to join him at Dean Witter, just as Leogrande asked them to continue doing business with him at Smith Barney. By April of 1995, Copeland alleged that he was the dominant partner of the partnership as Leogrande had become more involved in certain real estate ventures.

Further, Copeland maintained that in connection with the software alleged to have been misappropriated the software was returned at the instruction of his Dean Witter branch manager; that he attempted to delete the software off of his computer; and that he engaged the services of a computer expert in an effort to ensure that he had successfully deleted the software. Copeland alleged that Leogrande hired someone to illegally enter the Dean Witter offices and initiated access to the computer records on Copeland's computer.

Dean Witter denied any improper conduct, any violation of the rules of the NASD and NYSE and any conspiracy as alleged in the third-party claim.

### RELIEF REQUESTED

Claimant requested the following:

1. That an industry panel be convened on an expedited basis to hear this dispute;
2. That the panel declare that Copeland is not liable to Smith Barney and/or Leogrande in any respect, and dispose of any and all claims for injunctive relief raised by Leogrande and/or Smith Barney;
3. That Leogrande and Smith Barney reimburse Copeland for all costs of the defense of the New York State Supreme Court action brought by them, including all attorneys' fees;
4. Award damages for Leogrande's unfair trade practices and improper and false statements in the sum of \$1,000,000.00;
5. That the panel grant Copeland such further relief as it deems equitable and proper.

Respondents Smith Barney and Leogrande requested that the statement of claim be dismissed in its entirety; and in addition, Leogrande requested the following:

**A Temporary Restraining Order to be issued immediately, and that, thereafter, an expedited hearing be scheduled to determine the issuance of both a preliminary and a permanent injunction restraining and enjoining Copeland and Dean Witter, directly or indirectly, alone or in concert with others, including any officer, agent, employee and/or representative:**

- a. from soliciting sales of securities and/or insurance business from any customer of Leogrande or otherwise inducing or attempting to induce any said customer of Leogrande to terminate his/her relationship with Smith Barney, if said customer was someone whom Copeland dealt with or even contacted or whose name became known to Copeland while Copeland was in the employ of Smith Barney; and, further, from accepting any business or account transfer forms from any of said customers whom Copeland has so solicited, induced or attempted to induce at any time in the past for the purpose of having said customer do business with Copeland or Dean Witter;
- b. from using, disclosing, or transmitting confidential information, trade secrets or other information contained in the records of Smith Barney and Leogrande, including but not limited to the names and addresses of Leogrande's Smith Barney customers, said customers' financial statements, investment objectives, estate planning documents and the securities held by these customers in their Smith Barney accounts; and

- c. from engaging in any and all other such acts as the Arbitration Panel deems appropriate for injunctive relief.
2. An order that original records, copies and all reproductions of Smith Barney's documents, computer software, or information referencing or relating in any way to Leogrande's customers, said customers' financial statements, investment objectives, estate planning documents and the securities held by these customers in their Smith Barney accounts, which are or ever were in the possession of Copeland or Dean Witter, be immediately returned to Smith Barney.
3. Actual damages in favor of Leogrande in an amount to be proven at the hearing of this matter, and the costs incurred herein, including reasonable attorney's fees.
4. Punitive damages in favor of Leogrande in an amount to be awarded by the Panel at the hearing of this matter.
5. A full and complete accounting of all investment activities of Copeland since April 7, 1995.
6. Such other and further relief as the Panel may deem just and proper.

Copeland requested that respondents' request for a restraining order to be issued now or in the future should be denied; that respondents' request for punitive damages be denied; and that all claims of alleged wrongdoing or improper conduct be denied.

Dean Witter requested that the third-party claim be dismissed for failure to state a claim against Dean Witter.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about October 5, 1995, Leogrande initiated a New York State Supreme Court action and, pursuant to New York Civil Practice Law and Rules Section 7502, the court granted a Temporary Restraining Order, by Order to Show Cause, against Copeland. On October 18, 1995, the court ordered the parties to proceed with expedited arbitration and continued its Temporary Restraining Order until the day prior to the arbitration hearing.

The parties to this arbitration proceeding requested expedited arbitration before an industry panel of three arbitrators.

### **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. Respondents Smith Barney and Leogrande be and hereby are liable and shall pay to the claimant the sum of \$100,000.00 as punitive damages arising from the defamation of Copeland's business reputation;
2. All other claims asserted by the claimant be and hereby are denied;
3. Claimant be and hereby is liable and shall pay to respondent Leogrande \$100,000.00 for violation of copyright laws and breach of the March 17, 1992 Employment Compliance Agreement and July 20, 1994 Personal Computer Guidelines Agreement;
4. All other counterclaims and third-party claims be and hereby are denied;
5. Each party shall bear their own costs, including attorneys' fees.

### **FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

9 hearing sessions x \$1,000.00 = \$9,000.00

1. Claimant Copeland and third-party respondent Dean Witter be and hereby are jointly and severally liable in the amount of \$4,500.00 representing one-half of forum fees assessed. However, claimant previously deposited \$1,000.00 with the NASD. Therefore, the amount payable to the NASD is \$3,500.00.
2. Respondents Smith Barney, Inc. and Leogrande be and hereby are jointly and severally liable in the amount of \$4,500.00 representing one-half of forum fees assessed. However, Leogrande previously deposited \$600.00 with the NASD. Therefore, the amount payable to the NASD is \$3,900.00

Concurring Arbitrators' Signatures:

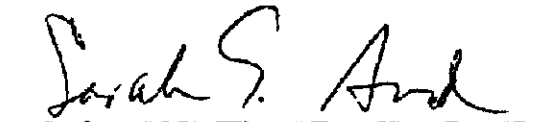


Sarah G. Anderson, Esq.  
Industry Arbitrator - Chairperson

Robert L. Spangler  
Industry Arbitrator

Josef E. Windbiel  
Industry Arbitrator

I, Sarah G. Anderson, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.



Sarah G. Anderson

Date of Decision: February 22, 1996

Concurring Arbitrators' Signatures:

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Sarah G. Anderson, Esq.  
Industry Arbitrator - Chairperson

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Robert L. Spangler  
Industry Arbitrator



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Josef E. Windbiel  
Industry Arbitrator



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Josef E. Windbiel  
Industry Arbitrator

I, Josef D. Windbiel, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.



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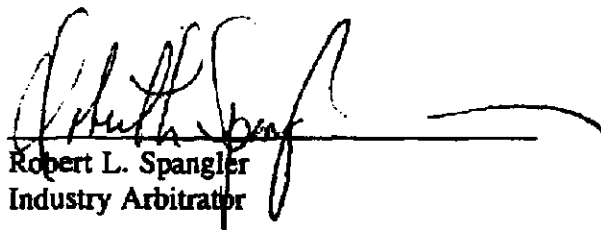
Josef D. Windbiel

Date of Decision: February 22, 1996

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Concurring Arbitrators' Signatures:

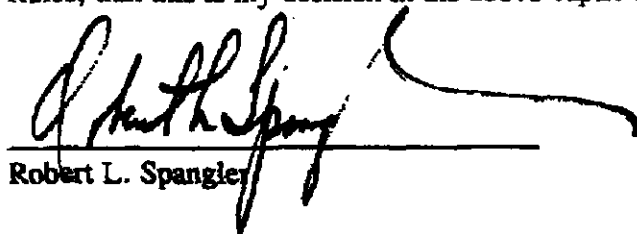
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Sarah G. Anderson, Esq.  
Industry Arbitrator - Chairperson

  
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Robert L. Spangler  
Industry Arbitrator

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Josef E. Windbiel  
Industry Arbitrator

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Josef E. Windbiel  
Industry Arbitrator

I, Robert L. Spangler, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

  
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Robert L. Spangler

Date of Decision: February 22, 1996