

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Walter L. Abel, (Claimant) vs. Kristian Lou, Kidder, Peabody & Co., Incorporated, PaineWebber Incorporated, and PaineWebber Group, Inc., (Respondents)

Case Number: 01-01734

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant, Walter L. Abel, hereinafter referred to as "Claimant": James G. Green, Jr., Esq., Pepe & Hazard, Hartford, CT. Previously represented by Dean M. Cordiano, Esq., Day, Berry & Howard LLP, Hartford, CT, as co-counsel.

Respondent, Kristian Lou ("Lou"): Brian F. McDonough, Esq., Drinker Biddle & Reath LLP, New York, NY. Previously represented by: Joel E. Davidson, Esq., Davidson, Manchel & Brennan, LLP, Northvale, NJ, for the time period that he was employed by PaineWebber Incorporated.

Respondent, Kidder, Peabody & Co., Incorporated ("Kidder"): Brian F. McDonough, Esq., Drinker Biddle & Reath LLP, New York, NY

Respondents, PaineWebber Incorporated ("PWI") and PaineWebber Group, Inc. (PW Group"), did not appear at the hearings in this matter. Previously represented by: Joel E. Davidson, Esq., Davidson, Manchel & Brennan, LLP, Northvale, NJ.

CASE INFORMATION

Statement of Claim filed on or about: April 5, 2001.

Opposition to PWI, PW Group, and Lou's Motion to Dismiss filed by Claimant on or about: October 1, 2001.

Opposition to Kidder and Lou's Motion to Dismiss filed by Claimant on or about: October 1, 2001.

Sur-Reply in Opposition to PWI, PW Group, and Lou's Reply in Support of the Motion to Dismiss filed by Claimant on or about: November 20, 1001.

Claimant, by Power of Attorney Eleanor P. Abel, signed the Uniform Submission Agreement: April 5, 2001.

Joint Statement of Answer filed by Kidder and Lou on or about: July 19, 2001.

Motion to Dismiss filed by Kidder and Lou on or about: July 19, 2001.

Reply in Support of Motion to Dismiss filed by Kidder and Lou on or about: November 7, 2001.

Kidder did not sign a Uniform Submission Agreement.

Lou did not sign a Uniform Submission Agreement.

Joint Statement of Answer and Motion to Dismiss filed by PWI, PW Group, and Lou on or about: July 18, 2001.

Response to Claimant's Opposition to their Motion to Dismiss filed by PWI, PW Group, and Lou on or about: November 2, 2001.

PWI did not sign a Uniform Submission Agreement.

PW Group did not sign a Uniform Submission Agreement.

Lou did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: violations of federal and state law; breach of contract; breach of fiduciary duty; churning; unauthorized trades; unsuitability; improper supervision; and improper use of margin. Claimant's claim involved unspecified financial products.

Unless specifically admitted in their Joint Answer, Kidder and Lou denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Claimant's claims are ineligible for arbitration pursuant to Rule 10304 of the NASD Code of Arbitration Procedure; Claimant's claims are barred by the federal and Connecticut state statutes of limitations; Claimant's claims are barred by the equitable defenses of estoppel, waiver, ratification, and laches; Claimant's claims are barred, in whole or in part, by the Claimant's own contributory negligence and/or recklessness; any claims for punitive damages are precluded by applicable Connecticut law as well as the Constitutions of Connecticut and the United States; any claims for attorneys' fees are barred by the "American Rule", which requires each side to bear their own legal fees; there is no private right of action for alleged violations of internal securities industry rules; and any claims for damages in excess of Claimant's out-of-pocket losses are unduly speculative and hypothetical.

RELIEF REQUESTED

Claimant requested:

- a. Compensatory damages in the amount of \$4,000,000.00;
- b. Punitive damages in the amount of \$2,000,000.00;
- c. Attorneys' fees; and
- d. Costs of arbitration.

Kidder and Lou requested that the Statement of Claim against them be dismissed in its entirety, and that they be awarded such further relief as the Panel may deem just, equitable, and proper.

OTHER ISSUES CONSIDERED AND DECIDED

By letter dated August 22, 2002, Claimant advised NASD Dispute Resolution that he had entered into a settlement agreement with PWI, PW Group, and Lou, for the time period during which Lou was employed by PWI and during which Claimant had a brokerage account at PWI.

Following the hearing on August 27, 2002, the Panel excused Claimant from further attendance at the hearings, upon stipulation of the parties, due to Claimant's disability status.

Kidder and Lou did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration and, having answered the claim, appeared and testified at the hearing are bound by the determination of the Panel on all issues submitted.

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.

AWARD

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

1. Kidder is solely liable for and shall pay to Claimant the sum of \$240,000.00 as compensatory damages.

2. Lou is solely liable for and shall pay to Claimant the sum of \$60,000.00 as compensatory damages.
3. Kidder is solely liable for and shall pay to Claimant the sum of \$234,000.00 as attorneys' fees. Said attorneys' fees are to be made payable to James Green, Esq. of the law firm Pepe & Hazard. The Panel awarded attorneys' fees pursuant to *L.F. Pace & Sons, Inc. v. The Travelers Indemnity Co.*, 9 Conn. App. 30, 46-50 (1986), as argued in Claimant's Reply Re: Attorneys' Fees dated February 3, 2003.
4. Claimant's request for punitive damages is hereby denied.
5. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 600.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, Kidder, Peabody & Co., Incorporated and PaineWebber Incorporated are parties.

Kidder, Peabody & Co., Incorporated

Member surcharge	= \$ 3,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 5,000.00

PaineWebber Incorporated

Member surcharge	= \$ 3,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 5,000.00

Adjournment Fees

Adjournments requested during these proceedings:

Jul. 15-19 & 22-25, 2002, adjournment by Kidder and Lou	= \$ 1,200.00
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Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) Pre-hearing sessions with Panel x \$1,200.00 = \$ 6,000.00

Pre-hearing conferences:	January 8, 2002	1 session
	March 4, 2002	1 session
	April 11, 2002	1 session
	May 17, 2002	1 session
	June 17, 2002	1 session

Twenty-four (24) Hearing sessions x \$1,200.00 = \$28,800.00

Hearing Dates:	August 26, 2002	2 sessions
	August 27, 2002	2 sessions
	September 3, 2002	2 sessions
	September 5, 2002	2 sessions
	November 13, 2002	2 sessions
	November 14, 2002	2 sessions
	November 15, 2002	2 sessions
	November 19, 2002	2 sessions
	November 20, 2002	1 session
	November 25, 2002	3 sessions
	November 26, 2002	2 sessions
	March 27, 2003	2 sessions

Total Forum Fees = \$34,800.00

1. The Panel has assessed \$17,400.00 of the forum fees against Claimant.
2. The Panel has assessed \$17,400.00 of the forum fees jointly and severally against Kidder and Lou.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant, requested tapes, \$39.75.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$17,400.00
<u>Administrative Costs</u>	<u>= \$ 39.75</u>
Total Fees	= \$18,039.75
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution	= \$16,239.75

2. Kidder is solely liable for:

<u>Member Fees</u>	<u>= \$ 8,600.00</u>
Total Fees	= \$ 8,600.00
<u>Less payments</u>	<u>= \$ 3,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,600.00

3. PWI is solely liable for:

<u>Member Fees</u>	<u>= \$ 8,600.00</u>
Total Fees	= \$ 8,600.00
<u>Less payments</u>	<u>= \$ 8,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Kidder and Lou are jointly and severally liable for:

Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	<u>= \$17,400.00</u>
Total Fees	= \$18,600.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$18,600.00

All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

John J. Mark	-	Public Arbitrator, Presiding Chair
Harold Rubin	-	Public Arbitrator
Francis A. Sullivan	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

John J. Mark
John J. Mark
Public Arbitrator, Presiding Chair

April 15, 2003
Signature Date

Harold Rubin
Public Arbitrator

Signature Date

Francis A. Sullivan
Non-Public Arbitrator

Signature Date

May 2, 2003

Date of Service (For NASD Dispute Resolution use only)


ARBITRATION PANEL

John J. Mark	-	Public Arbitrator, Presiding Chair
Harold Rubin	-	Public Arbitrator
Francis A. Sullivan	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

John J. Mark
Public Arbitrator, Presiding Chair

Signature Date


Harold Rubin
Public Arbitrator

4/11/03
Signature Date

Francis A. Sullivan
Non-Public Arbitrator

Signature Date

May 2, 2003
Date of Service (For NASD Dispute Resolution use only)

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Harold Rubin	-	Public Arbitrator
Francis A. Sullivan	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

John J. Mark
Public Arbitrator, Presiding Chair

Signature Date

Harold Rubin
Public Arbitrator

Signature Date



Francis A. Sullivan
Non-Public Arbitrator



Signature Date

May 2, 2003

Date of Service (For NASD Dispute Resolution use only)