

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
Suite 1680
Three First National Plaza
Chicago, IL 60602
(312) 899-4440

In the Matter of the Arbitration Between

Name of Claimant(s)

Thomas L. and Julia L. Martin

88-01162

Name of Respondent(s)

Kidder, Peabody & Co., Incorporated
Clay Becker

CASE SUMMARY

In a Statement of Claim filed with the NASD on April 12th, 1988, Claimants Thomas L. and Julia L. Martin ("Martin") allege that Respondents misrepresented to the Martins certain material facts and thereby induced them to open an index option account in February of 1986 in which trading was controlled by Hanseatic Investment Advisory Service ("Hanseatic"), a computer trading company. The alleged material misrepresentations made were that: 1) this type trading had made a great deal of money; 2) the Hanseatic Service managed huge sums of money for the Bass Brothers; 3) automatic computer stops would prevent any losses; 4) there was no way the Martins could lose money; and 5) Becker would watch the money as if it were his own. The Martins were not warned about the risks involved in this trading. By July of 1986, the Claimants lost a substantial portion of their investment and told Respondent Becker to discontinue trading.

In a Statement of Answer filed with the NASD on July 14th, 1988, Respondents Kidder Peabody & Co. ("Kidder") and Clay Becker ("Becker") deny the allegations of wrong doing and state affirmatively that: 1) the Martins granted Hanseatic discretionary trading authority over the account and made all investment decisions, not Kidder or Becker; 2) Becker did tell the Martins he would keep a close watch on their account, but he did not have authority over trading decisions; 3) Becker informed them of the risk and only invested a small portion of their liquid net worth; and, 4) Hanseatic was not mentioned as having managed money for the Bass brothers. As affirmative defenses, Respondents state that the claim is barred for: 1) failing to set forth facts upon which relief may be granted; 2) the statute of limitations; 3) the doctrines of ratification, waiver and estoppel; and, 4) contributory negligence on the part of the claimants.

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RELIEF REQUESTED

Claimants requested damages in the amount of \$79,387.11 representing the \$69,261.00 lost in the investment, plus \$10,126.11 for the amount of interest which would have been earned in a 6-month CD.

Respondents requested that this matter be dismissed and that the Claimants be assessed with the costs of this proceeding.

AWARD

On July 26th and 27th, 1990, in Houston, Texas during a hearing lasting 6 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on March 10, 1988 by Claimants Thomas L. and Julia L. Martin, on July 11, 1988 by George C. Cabell on behalf of Respondent Kidder, Peabody and Co., Incorporated and on July 21, 1988 by Respondent Clay Becker.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Kidder Peabody and Co., Incorporated and Clay Becker are jointly and severally liable for and shall pay to claimants as damages the sum of \$69,261.00;

2. The parties shall each bear their own respective costs including attorneys' fees;

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$500.00 filing fee previously deposited with the NASD by the Claimants, Thomas L. and Julia L. Martin

By the Panel

Dated: _____

/S/

Dean J. Capp, Esq.
Presiding Chair

Dated: 9-4-90

/S/

Cynthia J. Thomson, Esq.

Dated: _____

/S/

Kathy R. Holler

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Dated: <u>9/6/90</u>	/S/ <u>Dean J. Capp</u> Dean J. Capp, Esq. Presiding Chair
Dated: _____	/S/ _____ Cynthia J. Thomson, Esq.
Dated: _____	/S/ _____ Kathy R. Holler

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By the Panel

Dated: _____

/S/

Dean J. Capp, Esq.
Presiding Chair

Dated: _____

/S/

Cynthia J. Thomson, Esq.

Dated: 2/10/91

/S/

Kathy R. Holler