

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between )  
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ROBERT H. and GLORIA S. HUDLER, )  
 ) Claimants, ) Case #88-02563  
 ) Award  
vs. )  
 )  
KIDDER PEABODY & CO. and MYRON ENGERMAN, )  
 ) Respondents. )  
 )  
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Heard before the members of the Arbitration Panel:

Myron Dunay, Esq.  
Andrew Bartfay  
Carl J. Hegner

CASE SUMMARY

This claim was filed with the NASD, Inc. on August 12, 1988. The hearing was conducted on January 29, March 1 and 2, and April 9, 1990, in Fort Lauderdale, FL, with a total of eight (8) sessions.

Claimants, Robert H. and Gloria S. Hudler ("Hudlers"), alleged that Respondents, Kidder Peabody & Co. ("Kidder") and Myron Engerman ("Engerman"), induced Claimants to open a margin account; purchased and sold stocks and options for Claimants' account; that such purchases and sales caused Claimants to suffer losses in the market crash of October 1987; and, that Respondents' actions constituted breach of fiduciary duty; negligence; fraudulent misrepresentation pursuant to Section 517.301 of the Florida Statutes; conversion; and, civil theft pursuant to Section 812.014 of the Florida Statutes.

Respondents alleged that they could not guarantee Claimants against losses; Claimants were informed of the risks involved; and, Respondents had no control over the crash and the losses sustained thereby were market losses. Respondents asserted the affirmative defenses of: waiver; estoppel; ratification; contributory negligence; and, lack of causation.

RELIEF REQUESTED

Claimants requested damages in the amount of \$75,000.00 plus interest; treble damages; attorney's fees; costs; and, the loss of value of the IBM stock which was liquidated.

Respondents requested dismissal and costs.

AWARD

On January 29, March 1 and 2, and April 9, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on June 30, 1988, and by Respondents Kidder on September 9, 1988, and Engerman on September 13, 1988. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondents are found not liable to the Claimants and, therefore, all claims against them are hereby dismissed.
3. Claimants' requests for treble damages and attorney's fees are hereby denied.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Six Thousand and 00/100 (\$6,000.00) Dollars (\$750.00 x eight sessions). Respondents are hereby assessed forum fees in the amount of Three Thousand and 00/100 (\$3,000.00) Dollars, jointly and severally, and Claimants are hereby assessed forum fees in the amount of Three Thousand and 00/100 (\$3,000.00) Dollars, for which the National Association of Securities Dealers, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimant in partial satisfaction thereof.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

#### OTHER ISSUES

None.

#### ARBITRATORS CONCURRING

Myron Dunay, Esq.  
Andrew Bartfay  
Carl J. Hegner

Received this 24th day of April 1990