

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

CHARLES W. HIEATT AND
LYNN HIEATT

Claimants

and

KIDDER PEABODY & COMPANY, INC.
AND PATRICK STEVEN JAGE

Respondents

CASE NO. 88-02760

CASE SUMMARY

In a claim filed with the NASD on August 30, 1988, Charles W. & Lynn Hieatt ("Claimants") alleged that Kidder Peabody & Co. Incorporated and Patrick Steven Jage ("Respondents") made fraudulent misrepresentations in violation of Section 10b and Rule 10b-5 of the Securities Exchange Act of 1934. Claimants further alleged that Respondent Kidder Peabody & Co. was liable as a controlling person pursuant to Section 20(a) of the Securities Exchange Act of 1934. The allegations also included breach of fiduciary duty, violation of the suitability rule of the NASD Rules of Fair Practice and excessive trading concerning the trading of speculative common stocks in Claimants' securities account.

Respondent Kidder Peabody & Co. denied that any federal securities laws or rules or any other rule or regulation were violated in the handling of Claimants' account. Respondent Jage also denied that any securities law or rule or any other rule or regulation was violated in the handling of Claimants' account.

RELIEF REQUESTED

Claimants request damages in the amount of \$91,701.00. Respondent Kidder Peabody & Co. requests that Claimants' Statement of Claim be dismissed and the costs of the proceeding be awarded against Claimants. Respondent Jage requests that Claimants' Statement of Claim be dismissed and the costs of the proceeding be awarded against Claimants.

PROCEDURAL HISTORY

Subsequent to the conclusion of the testimony on July 1, 1989 and prior to scheduling of closing argument in this matter, Judge Frederick J. Hertz, Chairman of the panel, passed away. The parties were advised of this and told that pursuant to Section 24 of the NASD Code of Arbitration Procedure the remaining two arbitrators would decide the case or a replacement arbitrator would be appointed to fill the vacancy created by the death of Judge Hertz. All parties agreed that the remaining arbitrators could decide the case. Thereafter, closing arguments were scheduled for March 12, 1990 and the decision was rendered by the remaining two arbitrators.

3/27/90

AWARD

On Wednesday, June 28, 1989, Thursday, June 29, 1989, Friday, June 30, 1989, Saturday, July 1, 1989 and Monday, March 12, 1990 during a hearing lasting eight (8) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on August 15, 1988 by Claimants Charles W. and Lynn Heatt, and on January 3, 1989 by George C. Cabell on behalf of Respondent Kidder Peabody & Co., Inc. Respondent Patrick Steven Jage did not execute a submission to arbitration but answered the claim, appeared at the hearing during all sessions and testified. Pursuant to Section 12 of the NASD Code of Arbitration Procedure and the NASD By-Laws, Respondent Jage is required to submit to arbitration upon the insistence of a public customer. Accordingly, Respondent Jage is bound by the panel's final determination on all issues submitted.

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

1. Respondents Kidder Peabody & Co., Inc. and Patrick Steven Jage are jointly and severally liable for and shall pay to Claimants the sum of Twenty-Two Thousand Five Hundred Dollars and No Cents (\$22,500.00);
2. The parties shall each bear their respective costs and expenses including any attorneys' fees incurred in this matter.
3. Pursuant to NASD Section 43(b) of the Code of Arbitration Procedure, the NASD shall retain as forum fees, the \$500.00 filing fee deposited with the NASD by Claimants. Claimants are assessed additional forum fees of \$500.00. Respondent Jage is assessed additional forum fees of \$1,000.00 and Respondent Kidder Peabody & Co., Inc. is assessed additional forum fees of \$1,000.00. All forum fees are payable to the NASD.

Dated: 3/16/90 /S/ Mark Miller
Mark Miller, Esq.
Presiding Chair

Dated: _____ /S/ _____
Malcolm Irving

2001

AWARD

On Wednesday, June 28, 1989, Thursday, June 29, 1989, Friday, June 30, 1989, Saturday, July 1, 1989 and Monday, March 12, 1990 during a hearing lasting eight (8) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on August 15, 1988 by Claimants Charles W. and Lynn Hieatt, and on January 3, 1989 by George C. Cabell on behalf of Respondent Kidder Peabody & Co., Inc. Respondent Patrick Steven Jage did not execute a submission to arbitration but answered the claim, appeared at the hearing during all sessions and testified. Pursuant to Section 12 of the NASD Code of Arbitration Procedure and the NASD By-Laws, Respondent Jage is required to submit to arbitration upon the insistence of a public customer. Accordingly, Respondent Jage is bound by the panel's final determination on all issues submitted.

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

1. Respondents Kidder Peabody & Co., Inc. and Patrick Steven Jage are jointly and severally liable for and shall pay to Claimants the sum of Twenty-Two Thousand Five Hundred Dollars and No Cents (\$22,500.00);
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By the Panel

Dated: _____ /S/ _____
Mark Miller, Esq.
Presiding Chair

Dated: _____ /S/ _____
Malcolm Irving