

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

William Bennett and
Virginia Bennett

Claimant(s)

vs.

Kidder Peabody & Co., Inc.,
Marian Cummings and
Robert Cummings

Respondent(s)

AWARD

CASE NO. 88-02961

SUMMARY OF ISSUES

This case was filed on September 20, 1988.

Claimant alleged: Negligence and breach of fiduciary duty in the purchase of 15,000 shares of common stock in Counsellors Tandem Securities Fund, Inc., (CTF). When respondent Cummings initially contacted claimants regarding CTF stock, respondent Kidder Peabody had entered into, or was about to enter into, one or more agreements with CTF to act as an underwriter of the stock. As a result, Cummings and Kidder were acting as dual agents for claimants and CTF, which was not disclosed to claimants.

Respondents alleged: Claimants were provided copies of the prospectus on CTF three times which contained full disclosure on the public offering. Claimant William Bennett is a sophisticated real estate developer. Respondents denied all allegations and asserted 1) failure to set forth facts upon which relief may be granted; 2) the claim is barred by the applicable statute of limitations; 3) lack of causation; 4) negligence and contributory negligence; 5) assumption of risk; 6) breach of warranties of representations by claimants; and 7) the claims are barred by the equitable doctrines of waiver, estoppel, ratification and unclean hands.

DAMAGES AND RELIEF REQUESTED

Claimants requested: 1. Compensatory damages of \$ 67,047.59 for negligence and breach of fiduciary duty;

2. Interest at legal rate from the date of purchase;

3. Punitive damages.

Respondents requested costs.

DAMAGES AND RELIEF AWARDED

On August 8 and 9, 1989, in Seattle, Washington, the undersigned arbitrators heard in six sessions the controversy between the parties as

set forth in submissions to arbitration signed by the Claimants September 14, 1988 and by Respondents Kidder Peabody on January 16, 1988 and Robert and Marian Cummings on January 30, 1989. 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. Each and every claim is dismissed.
2. The claim for punitive damages is dismissed.
3. The parties shall each bear their respective costs including attorneys' fees.
4. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant.

Also in accordance with Section 43 the arbitrators assess forum fees as follows:

- a) Against Claimants, \$2250.00 jointly and severally, payable to the NASD, which is reduced by the \$750.00 filing fee for deposit already paid;
- b) Against Respondent Kidder Peabody, Inc. only, \$2250.00 to be paid to the NASD.

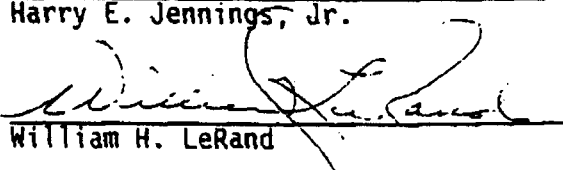
OTHER ISSUES

Claimants were allowed to amend claim at the hearing from a claim of recession to claim for monetary damages, and amended their prayer from \$149,547.59 to \$82,500.00. This figure was further amended by Claimants' submission of August 10, 1989 to \$67,047.59.

ARBITRATORS CONCURRING

Harry E. Jennings, Jr.

Date Served: 8/29/89



William H. LeRand

Monte W. Anthony