

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Charleen Standley

Claimant

vs.

Kidder, Peabody & Co., Inc.

Respondent

AWARD

CASE NO. 89-01907

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on July 3, 1989. Claimant alleged fraud, breach of fiduciary duty, negligence, violations of NASD and exchange rules, and securities law violations. Specifically, Claimant alleged that Respondent inadequately disclosed risks, recommended unsuitable and speculative investments that did not comply with Claimant's stated objectives, caused undue concentration of investments in Citicorp, Occidental Petroleum and utility stocks, improperly encouraged margin borrowing to pay for living expenses, made unauthorized trades, and excessively traded the account to generate commissions.

Respondent denied the allegations and maintained that after discussing various investment strategies with her account executive, Claimant elected to engage in a dividend recapture program of purchasing public utility stocks prior to the dividend declaration date and then selling the stocks after the dividend is paid, thereby generating income pursuant to Claimant's expressed investment objective. Respondent further maintained that the advantages and disadvantages, such as high transactional costs, as well as the risks of employing the use of margin in such a program were fully disclosed and discussed with Claimant, and that Claimant approved all transactions in the accounts.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages, as amended at hearing, in the amount of \$79,281.00 on the IRA account, \$6,192.00 on the individual account, commissions paid on both accounts in the amount of \$13,452.00, reasonable attorney's fees and costs, and unspecified punitive damages.

Respondent requested dismissal of the claim and costs.

DAMAGES AND RELIEF AWARDED

On May 3, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant

on June 27, 1989 and by Respondent on August 30, 1989. The hearing was conducted in Los Angeles, California and lasted three sessions. 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. Claimant is hereby awarded the sum of Fifty-Four Thousand, Four Hundred Eighty-Four Dollars and Zero Cents (\$54,484.00) calculated as follows:

The arbitrators concluded that the dividend recapture program offered by Respondent Kidder, Peabody & Co., Inc. was an inherently unreliable investment tool, especially unsuitable for Claimant herein, and prone to churning. The arbitrators concluded that the damages to Claimant were Fifty-Eight Thousand, Six Hundred Five Dollars (\$58,605). However, the arbitrators felt that these damages should be mitigated by some amount to reflect the comparative negligence of Claimant. Therefore, the arbitrators deducted from this sum the amount of Four Thousand, One Hundred Twenty-One Dollars (\$4,121), which was the loss generated by the purchase and sale of the Occidental Petroleum stock. The arbitrators believed that given Mrs. Standley's long-standing objection to stock transactions, that she should have objected to and refused to engage in this transaction. Thus the arbitrators found that the total damages were Fifty-Four Thousand, Four Hundred Eighty-Four Dollars (\$54,484).

2. Claimant is further awarded interest on the sum of \$54,484.00 at the rate of ten percent (10%) for the eighteen (18) months up to and including May 1, 1990.

3. The arbitrators further concluded that no interest shall accrue for the period of May 1, 1990 to June 30, 1990; but if Respondent Kidder, Peabody does not pay to Claimant Charleen Standley the Fifty-Four Thousand, Four Hundred Eighty-Four Dollars (\$54,484) plus ten percent (10%) interest for eighteen months, on or before June 30, 1990, post-judgment interest at 10% shall commence on June 30, 1990 and shall continue until all amounts due Claimant Charleen Standley are paid.

4. The arbitrators found that attorneys' fees were inappropriate in this case. Furthermore, the arbitrators found that this was not an appropriate case for punitive damages, basing their findings primarily on negligence rather than any intentional act or breach of fiduciary duty.

5. The parties shall each bear their respective costs.

6. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$400.00 filing fee previously

deposited by the Claimant and Respondent is hereby assessed the sum of \$400.00 and shall reimburse Claimant directly. In addition, each party is further assessed the sum of \$200.00 representing forum fees and shall pay this sum to the National Association of Securities Dealers, Inc. directly.

OTHER ISSUES

The parties stipulated to the execution and service of the award in counterpart copies.

PRESIDING ARBITRATORS

DATE SERVED: 06/19/90

Steven Gourley, Esq.

Daniel J. McCarthy

Diana G. Davis
Diana G. Davis