

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Donald & Donna Montgomery et al.

Name of Respondent(s)

Kidder, Peabody & Co., Incorporated

90-00403

REPRESENTATION

Claimants Donald E. and Donna L. Montgomery, Timothy J. Montgomery, Katie Montgomery, Anthony Montgomery, Molly Montgomery, St. John's Publishing, Inc. and Donald E. Montgomery & Associates were represented by Donald E. Montgomery and Donna L. Montgomery.

Respondent Kidder, Peabody and Co., Inc. was represented by Michael Berens, Esq. of Kelly & Berens, P.A. of Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: February 8, 1990

Claimants Donald E. Montgomery, Donna L. Montgomery and Timothy Montgomery signed Submission Agreements on: September 8, 1989

Claimants St. John Publishing, Inc. and Donald E. Montgomery & Associates filed Submission Agreements signed on their behalf by Donna L. Montgomery on: September 8, 1989

Claimant Katie Montgomery's Submission Agreement was signed: March 23, 1990
Claimant's Anthony Montgomery, a minor and Molly Montgomery, a minor, Submission Agreement was signed by Donald E. Montgomery as Custodian on: March 23, 1990

Statement of Answer filed by Respondent, Kidder, Peabody and Co., Inc. on: June 11, 1990

Respondent Kidder, Peabody and Co., Inc. did not file with the NASD a properly executed submission to arbitration, but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure, and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

HEARING INFORMATION

Hearing Date/Sessions: June 3, 1991 for two (2) sessions
Hearing Location: Minneapolis, Minnesota

CASE SUMMARY

Claimants Donald E. Montgomery, Donna L. Montgomery, Timothy J. Montgomery, Katie Montgomery, Anthony Montgomery, Molly Montgomery, Donald E. Montgomery and Associates and St. John's Publishing, Inc. ("Claimants") alleged that Respondent Kidder, Peabody & Co., Inc. ("Respondent") engaged in the following activities in the operation of Claimants various accounts investing in common stocks and bonds;

1. Respondent failed to operate at all times in the best interests of Claimants as required by law;
2. Respondent failed to deliver the services for which Claimants paid;
3. Respondent mishandled the accounts by commingling funds between accounts;
4. Respondent placed Claimants in unsuitable investments;
5. Respondent failed to execute Claimants' specific and direct orders;
6. Respondent made false and misleading misrepresentations about account matters and investments;
7. Respondent failed to provide appropriate assistance and account service;
8. Respondent engaged in the unauthorized disposal of Claimants' funds; and
9. Respondent evaded responsibility and refused to assist claimants in remedying the damages incurred.

Respondent Kidder Peabody & Co., Inc. has denied the material allegations of the Statement of Claim, alleging that: 1) the allegations made have no factual support; 2) claimants' made the decisions with regard to the activities in their accounts; 3) no transactions were made without prior approval; and 4) Kidder did not commit fraud, breach of fiduciary duty or act

in bad faith.

RELIEF REQUESTED

Claimants Donald E. Montgomery, Donna L. Montgomery, Timothy Montgomery, Katie Montgomery, Anthony Montgomery, Molly Montgomery, St. John's Publishing, Inc. and Donald E. Montgomery and Associates requested entry of an award against Respondent Kidder, Peabody and Co., Inc. in the amount of \$65,011.59 plus further unspecified damages for loss of appreciation and interest, loan interest, lost time compensation, mental anguish, punitive damages, exemplary damages and costs.

Respondent Kidder, Peabody and Co., Inc. requested that the Statement of Claim be dismissed and denied in its entirety.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided 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 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.
2. The Statement of Claim is hereby dismissed and denied in its entirety;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

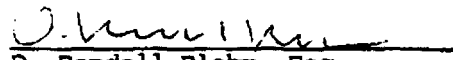
2 sessions X \$500.00 = \$1,000 minus hearing session deposit of \$350.00 = net \$650.00 due.

The National Association of Securities Dealers, Inc. shall retain the \$150.00 claim filing fee and the \$350.00 hearing session deposit previously deposited by the Claimants. Claimants Donald E. Montgomery and Donna L. Montgomery are liable for and shall pay to the NASD additional forum fees of \$150.00. Respondent Kidder, Peabody and Co., Inc. is liable for and shall pay to the NASD additional forum fees in the amount of \$500.00.

Fees are payable to the National Association of Securities Dealers, Inc.

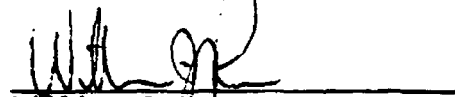
BY THE ARBITRATION PANEL

DATED:


D. Randall Blohm, Esq.
Presiding Chair
Public Arbitrator

8-12-91

Angela R. Banga, Esq.
Public Arbitrator


William J. Rosso
Industry Arbitrator

Aug 7, 1991

Fees are payable to the National Association of Securities Dealers, Inc.

BY THE ARBITRATION PANEL

DATED:

D. Randall Blohm, Esq.
Presiding Chair
Public Arbitrator

Angela R. Banga
Angela R. Banga, Esq.
Public Arbitrator

William J. Rosso
Industry Arbitrator

3/7/91