

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the ~~CONSOLIDATED~~ Arbitrations Between

Claimants

James B. Aldrich, as Trustee of the
Frank C. Layng and Alice M. Layng Trusts
James B. Aldrich
Margaret Layng Aldrich
William C. Elliott, Jr.
William Jeffrey Komlo
Jennifer Aldrich Komlo

90-00518

~~90-00518~~ 90-00912

90-00913

90-01007

Respondents

Kidder, Peabody & Co., Inc.
Robert F. Kurtz, Jr.

Third-Party Respondents

James B. Aldrich
Margaret Layng Aldrich
William C. Elliott, Jr.
William Jeffrey Komlo
James B. Aldrich, as Trustee of the Frank C. and
Alice M. Layng Trusts

REPRESENTATION

For: James B. Aldrich (as Trustee and individually), Margaret Laying Aldrich,
William C. Elliott, Jr., William Jeffrey Komlo and Jennifer Aldrich
Komlo:

M. Duncan Grant, Esq. and Helen R. Haynes, Esq. of
Pepper, Hamilton & Scheetz.

For: Kidder, Peabody & Co., Inc.:

Alan M. Lieberman, Esq. and Bonnie MacDougal Kistler, Esq. of
Schnader, Harrison, Segal & Lewis.

For: Robert F. Kurtz, Jr.:

William J. Winning, Esq. of
Curran, Winning & Fioravanti, P.C.

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CASE INFORMATION

90-00518

Statement of Claim filed: February 21, 1990.

Submission Agreement of James B. Aldrich as Trustee signed: April 3, 1990.

Statement of Answer of Kidder, Peabody & Co., Inc. with Counterclaims,
Crossclaims and Third-Party Claims filed: June 13, 1990.

Submission Agreement of Kidder, Peabody signed: June 13, 1990.

An Amended Answer was subsequently filed and responses were received by all
Claimants to all Counterclaims and Third-Party Claims.

90-00912

Statement of Claim filed: March 28, 1990.

Submission Agreement of James B. and Margaret L. Aldrich signed: March 23,
1990.

Statement of Answer of Kidder, Peabody & Co., Inc. with Counterclaims,
Crossclaims and Third-Party Claims filed: May 23, 1990.

Submission Agreement of Kidder, Peabody signed: May 23, 1990.

An Amended Answer was subsequently filed and responses were received by all
Claimants to all Counterclaims and Third-Party Claims.

90-00913

Statement of Claim filed: March 28, 1990.

Submission Agreement of William C. Elliott, Jr. signed: March 16, 1990.

Statement of Answer of Kidder, Peabody & Co., Inc. with Counterclaims,
Crossclaims and Third-Party Claims filed: May 23, 1990.

Submission Agreement of Kidder, Peabody signed: May 23, 1990.

An Amended Answer was subsequently filed and responses were received by all
Claimants to all Counterclaims and Third-Party Claims.

90-01007

Statement of Claim filed: April 6, 1990.

Submission Agreement of William Jeffrey Komlo and Jennifer Aldrich Komlo
signed: April 5, 1990.

Statement of Answer of Kidder, Peabody & Co., Inc. with Counterclaims,
Crossclaims and Third-Party Claims filed: May 30, 1990.

Case Information (continued)

Submission Agreement of Kidder, Peabody filed: May 29, 1990.

An Amended Answer was subsequently filed and responses were received by all Claimants to all Counterclaims and Third-Party Claims.

Respondent Robert F. Kurtz, Jr.

He did not submit a written Statement of Answer. He did not execute a Submission Agreement nor did he appear at the hearings for the purposes of presenting a defense. However, Mr. Kurtz did voluntarily appear at some of the hearings, without representation, at the request of the parties for the purposes of offering testimony in connection with this matter. Mr. Kurtz was repeatedly apprised (on the record), by the arbitrators, of his right to have counsel present during any questioning and that any testimony elicited from him could be used against him. Mr. Kurtz voluntarily answered questions posed to him by counsel for the Claimants, counsel for Kidder, Peabody, and by the arbitrators. Neither Mr. Kurtz, nor his counsel, were present during any of the hearings other than those where he was asked to testify. Mr Kurtz offered no objection to the arbitration continuing in his absence and acknowledged, on the record, that he had received all pleadings in this matter and that he was fully aware that an award could be rendered against him if the arbitrators so found.

HEARING INFORMATION

<u>Hearing Dates</u>	<u>Sessions</u>
January 23, 1991----	2
January 24, 1991----	2
March 6, 1991-----	2
March 7, 1991-----	2
April 8, 1991-----	2
April 9, 1991-----	2
April 10, 1991-----	2
May 23, 1991-----	2
May 24, 1991-----	2
May 28, 1991-----	2
May 29, 1991-----	2
June 26, 1991-----	2
June 27, 1991-----	2
June 28, 1991-----	2
August 13, 1991----	2
August 14, 1991----	2
August 15, 1991----	2
September 5, 1991--	2

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Hearing Information (continued)

<u>Hearing Dates</u>	<u>Sessions</u>
September 6, 1991--	2
September 16, 1991-	2
September 17, 1991-	<u>2</u>
Total Hearing Sessions-----	<u>42</u>

Hearing Location: Offices of the National Association of Securities Dealers, Inc. ("NASD") in Philadelphia, PA.

THE PARTIES

90-00518

Claimants: James B. Aldrich, as Trustee of the Frank C. Layng and Alice M. Layng Trusts (hereinafter, "James Aldrich-Trustee")

Respondents: Kidder, Peabody & Co., Inc. (hereinafter, "Kidder, Peabody")
Robert F. Kurtz, Jr. (hereinafter, "Kurtz")

Third-Party

Respondents: James B. Aldrich, individually (hereinafter, "James Aldrich")
Margaret Layng Aldrich (hereinafter, "Margaret Aldrich")
William C. Elliott, Jr. (hereinafter, "William Elliott")
William Jeffrey Komlo (hereinafter, "William Komlo")

90-00912

Claimants: James and Margaret Aldrich

Respondents: Kidder, Peabody and Kurtz

Third-Party

Respondents: James Aldrich-Trustee, William Elliott and William Komlo

90-00913

Claimants: William Elliott

Respondents: Kidder, Peabody and Kurtz

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Third-Party

Respondents: James and Margaret Aldrich, James Aldrich-Trustee, and William Komlo

90-01007

Claimants: William Komlo and Jennifer Aldrich Komlo (hereinafter, "Jennifer Komlo")

Respondents: Kidder, Peabody and Kurtz

Third-Party

Respondents: James and Margaret Aldrich, William Elliott, and James Aldrich-Trustee

CASE SUMMARY

The above captioned matters were consolidated at the request of the Claimants, and the Respondents did not object.

In 90-00518, the Claimant, James Aldrich-Trustee, alleged that Respondent Kurtz, then employed by Kidder, Peabody, fraudulently transferred and misappropriated approximately 1.5 million dollars from the Trusts' accounts into the accounts of James Aldrich, William Komlo (James Aldrich's son-in-law), William Elliott (Kurtz's cousin) and to Kurtz himself, and that Kidder, Peabody failed to properly supervise Kurtz.

Kidder Peabody denied all allegations of wrongdoing, and asserted a counterclaim against James Aldrich-Trustee in which it alleged that he breached his fiduciary duties owed to the Trusts. Kidder, Peabody also asserted a cross-claim against Kurtz for indemnification and a return of all improperly transferred funds. Kidder, Peabody asserted third-party claims against William Elliott, Jeffrey Komlo, James and Margaret Aldrich in which it alleged that the monies deposited into their respective accounts was improper and that such funds should be returned to Kidder, Peabody.

In 90-00912, Claimants, James and Margaret Aldrich, alleged that Kurtz executed numerous unauthorized trades in their account and that he failed to follow their instructions with respect to various options transactions. In addition, the Claimants alleged that Kurtz improperly placed funds in their account from the Trust accounts, and that Kidder, Peabody failed to properly supervise Kurtz.

Kidder, Peabody denied all allegations of wrongdoing and asserted similar counterclaims, crossclaims and third-party claims as those set forth in 90-00518.

In 90-00913, the Claimant, William Elliott, alleged that Kurtz executed unauthorized trades in his account, fraudulently intercepted confirmation slips before they reached Elliott and improperly placed funds in his account from the Trust accounts. In addition, William Elliott alleged that Kurtz made misleading statements to him in an effort to conceal his actions, and that Kidder, Peabody failed to properly supervise Kurtz.

Kidder, Peabody denied all allegations of wrongdoing and asserted similar counterclaims, crossclaims and third-party claims as those set forth in 90-00518.

In 90-01007, the Claimants, William Komlo (a Series 7 registered account representative) and Jennifer Komlo, alleged that Kurtz executed unauthorized trades in their account, misrepresented the status of the positions in their account and did not follow their instructions as to the handling of the account. In addition, the Claimants alleged that Kurtz fraudulently arranged to stop the mailing of confirmation slips to the Claimants, and that Kurtz conducted fictitious trades in their account. Further, the Claimants alleged that Kidder, Peabody failed to properly supervise Kurtz.

Kidder, Peabody denied all allegations of wrongdoing and asserted similar counterclaims, crossclaims and third-party claims as those set forth in 90-00518.

RELIEF REQUESTED

CLAIMANTS:

James and Margaret Aldrich: Actual damages of \$783,575.00, plus interest; or alternatively, Actual damages of \$747,444.00, plus interest.

William and Jennifer Komlo: Actual damages of \$151,885.00, plus interest.

Frank Layng Trust: Actual damages of \$610,700.00, plus interest.

Alice Layng Trust: Actual damages of \$90,870.00, plus interest.

William Elliott: Actual damages of \$1,110,391.00, plus interest; or alternatively, Actual damages of \$837,594.00 plus interest.

In addition, the Claimants have all asked that their respective damage claims be trebled under the RICO statute and that they also be awarded their costs and attorneys' fees.

RESPONDENTS: Kidder, Peabody requested that all claims made against it be dismissed in their entirety, and that they should be awarded:

Actual damages of \$383,835.00, plus interest from William Elliott.

In addition, Kidder, Peabody requested that:

James and Margaret Aldrich be ordered to pay to the Frank C. and Alice M. Layng Trusts the sum of \$437,364.00, plus interest; and

William and Jennifer Komlo be ordered to pay to the Frank C. and Alice M. Layng Trusts the sum of \$301,700.00, plus interest.

Finally, Kidder, Peabody requested that if it is found liable in any amount, that it should be fully indemnified from James B. Aldrich as Trustee, Robert F. Kurtz, Jr., James and Margaret Aldrich, or William and Jennifer Komlo. It also requested an award of costs and attorneys' fees.

*****Note: In considering all the relief requested, the arbitrators also considered the fact that on July 30, 1990 Kidder, Peabody paid the sum of \$768,750.00 into the Trust accounts AND that on July 01, 1991 James and Margaret Aldrich paid \$437,364.00 into the Trust accounts.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The arbitrators determined that Respondent Robert F. Kurtz, Jr. had received adequate notice of the arbitration and was afforded adequate opportunity to present a defense. Moreover, by letter of his counsel, Respondent Kurtz affirmatively stated that he would not defend against any of the claims filed in this matter, nor appear at any of the hearings unless requested to be present for the purposes of testimony.
2. The arbitrators determined that pursuant to the by-laws of the NASD, to which Respondent Kurtz was found to be bound, Respondent Kurtz was required to submit to this arbitration notwithstanding the fact that he did not submit an executed Submission Agreement nor present a defense. Therefore, Respondent Kurtz is bound by this Panel's rulings and determinations.
3. Kidder, Peabody be and hereby is liable and shall pay to the Frank C. Layng Trust the sum of Four Hundred Sixty Seven Thousand Five Hundred Twelve

Dollars and Seventeen Cents (\$467,512.17), inclusive of interest.

4. Kidder, Peabody be and hereby is liable and shall pay to the Alice M. Layng Trust the sum of Sixty Three Thousand Seven Hundred Fifty One Dollars and Sixty Six Cents (\$63,751.66), inclusive of interest.

5. Robert F. Kurtz, Jr. be and hereby is liable and shall pay to William Elliott, Jr. the sum of One Hundred Sixty Two Thousand Five Hundred Sixty Dollars and No Cents (\$162,560.00), inclusive of interest.

6. Robert F. Kurtz, Jr. be and hereby is liable and shall pay to Kidder, Peabody the sum Four Hundred Fifty Four Thousand One Hundred Ninety Nine Dollars and Seventy Cents (\$454,199.70), inclusive of interest.

7. Robert F. Kurtz, Jr. be and hereby is liable and shall pay to the Frank C. Layng Trust the sum of One Hundred Seventy Six Thousand Dollars and No Cents (\$176,000.00), with no interest, as punitive damages. Punitive damages have been awarded in this instance due to the egregious manner in which Mr. Kurtz handled the Frank C. Layng Trust. The arbitrators base this assessment upon the evidence presented and the parties' respective arguments thereto.

8. Robert F. Kurtz, Jr. be and hereby is liable and shall pay to the Alice M. Layng Trust the sum of Twenty Four Thousand Dollars (\$24,000.00), with no interest, as punitive damages. Punitive Damages have been awarded in this instance due to the egregious manner in which Mr. Kurtz handled the Alice M. Layng Trust. The arbitrators base this assessment upon the evidence presented and the parties' respective arguments thereto.

9. William C. Elliott, Jr. be and hereby is liable and shall pay to Kidder, Peabody the sum of Three Hundred Eighty Three Thousand Eight Hundred Thirty Five Dollars and No Cents (\$383,835.00), with no interest.

10. William Jeffrey Komlo and Jennifer Aldrich Komlo be and hereby are jointly and severally liable and shall pay to Kidder, Peabody the sum of Three Hundred Fifty Six Thousand Six Dollars and Eighty Eight Cents (\$356,006.88), inclusive of interest.

11. James B. Aldrich and Margaret Layng Aldrich be and hereby are jointly and severally liable and shall pay to Kidder, Peabody the sum of Sixty Five Thousand Six Hundred Four Dollars and Sixty Cents (\$65,604.60), inclusive of interest.

12. All other claims, counterclaims, crossclaims and third-party claims be and hereby are dismissed in all respects.

FORUM FEES

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

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42 sessions x \$1,000.00 per session = \$42,000.00

PLUS Requisite Non-Refundable claim filing fees:

\$1,000.00 against all Claimants.....+ \$ 1,000.00
(jointly and severally)

\$1,000.00 against Kidder, Peabody.....+ \$ 1,000.00

Total Due to the NASD..... \$44,000.00

The Claimants shall liable for Forum Fees as follows:

James B. Aldrich, as Trustee: \$7,000.00

James B. (individually) and
Margaret Layng Aldrich, jointly and severally: \$7,000.00

William C. Elliott, Jr.: \$7,000.00

William Jeffrey Komlo and
Jennifer Aldrich Komlo, jointly and severally: \$7,000.00

The Respondents are liable for Forum Fees as follows:

Kidder, Peabody: \$7,000.00

Robert F. Kurtz, Jr.: \$7,000.00

The NASD shall retain the \$20,000.00 previously deposited by the Claimants, \$1,000.00 of which represents the requisite non-refundable claim filing fee and \$19,000.00 of which shall be applied toward the Forum Fees due and owing. In addition, the NASD shall retain the \$20,000.00 previously deposited by Kidder, Peabody, \$1,000.00 of which represents the requisite non-refundable claim filing fee and \$19,000.00 of which shall be applied toward the Forum Fees due and owing.

The Claimants, jointly and severally, shall pay directly to Kidder, Peabody the sum of Nine Thousand Dollars (\$9,000.00). This amount shall represent the balance of Forum Fees due and owing to the NASD from the Claimants, and a partial refund to Kidder, Peabody of monies previously deposited with the NASD in excess of the amount of which it is currently liable. Robert F. Kurtz, Jr. shall also pay directly to Kidder, Peabody the sum of Three Thousand Dollars (\$3,000.00). This amount shall represent a partial payment

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of Forum Fees due and owing to the NASD from Mr. Kurtz and a complete refund to Kidder, Peabody of monies previously deposited with the NASD in excess of the amount of which it is currently liable. In addition, Respondent Robert F. Kurtz, Jr. be and hereby is liable and shall pay to the NASD the sum of Four Thousand Dollars (\$4,000.00) which represents the balance of Forum Fees due and owing to the NASD.

CONCURRING ARBITRATORS SIGNATURES

/s/
John J. Jordan, Chairman (Public Arbitrator)

/s/
Joseph R. Lally (Public Arbitrator)

/s/
Bernard Bujak (Industry Arbitrator)

Date of Decision: *November 12*, 1991.