

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Rose D. Adler

90-02942

Name of Respondent(s)

Kidder, Peabody & Co., Incorporated  
Richard Reidy

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REPRESENTATION

For Claimant: William Greenberg, Esq.

For Respondent: Thomas A. Dubbs, Esq.

CASE INFORMATION

Statement of Claim filed: October 19, 1990.

Amended Statement of Claim filed November 8, 1990. Claimant's Reply to Response of Respondents to Claimant's Claim filed February 11, 1991.

Claimant's Submission Agreement signed on: February 2, 1990.

Respondent Richard Reidy's Submission Agreement signed on: January 25, 1991.

Respondent, Kidder, Peabody & Co., Inc.'s Submission Agreement signed on: December 10, 1991.

Response to Amended Statement of Claim filed on: January 11, 1991.

HEARING INFORMATION

Hearing Date/Sessions: December 4, 1991- 2 Sessions

Hearing Location: National Association of Securities Dealers, Inc. office  
located in New York City, New York.

CASE SUMMARY

Claimant alleged that Respondents acted negligently and breached the fiduciary duty owed the Claimant by failing to immediately sell shares of stock to cover a margin call pursuant to the instructions of Charles Adler on behalf of Rose Adler and, therefore, the price of the specific shares dropped and the Claimant was forced to then liquidate additional shares to cover the margin call.

Respondents maintained they acted completely within their responsibilities to the Claimant and whatever losses Claimant may have sustained were caused by the sharp decline in stock prices in the fall of 1987. Respondents further maintained that pursuant to the chaotic conditions of the markets at that time it was nearly impossible to get a report on any order on the day it was entered and Claimant was informed of this and that quotation screens were falling far behind the actual trading in the markets and Respondent Richard R. Reidy suggested to Claimant that she either sell with a lower limit or else enter a market order which the Claimant refused to do. Therefore, declines in the market were accompanied by additional margin calls upon the account and by the following week Claimant was informed that the account would have to be liquidated in whole or in part to be brought up to the appropriate margin level and following the liquidation there remained a debit balance including accrued interest.

In response to Respondents answer, Claimant maintained she was never advised her original instructions to sell had not been executed and the version of events as set in Respondents' response is directly contradictory to the statements made by Respondent Richard Reidy that the reason for the failure to sell was attributable to a fault on the part of Kidder, Peabody & Co., Inc.

RELIEF REQUESTED

Claimant requested damages of \$29,599.00 plus interest, costs, disbursements and reasonable attorneys' fees plus punitive damages. Claimant further requested dismissal of Respondents' counterclaim.

Respondents requested dismissal of Claimant's claim and judgement against Claimant for the amount of \$6,969.63 plus interest, as well as the costs and expenses including attorney's fees.

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 Respondents Kidder, Peabody, & Co., Inc., and Richard Reidy be and hereby are liable jointly and severally and shall pay to the Claimant the sum of \$7,500.00 plus simple interest at the rate of 9% per annum from October 20, 1987 until December 4, 1991.
2. The Respondents' counterclaim is denied.
3. The Claimant's request for punitive damages is denied.
4. Each side shall bear its own costs including attorneys fees.

FORUM FEES

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

2 sessions x \$400.00 = \$800.00 less hearing session deposit of \$400.00 = net \$400.00 due.

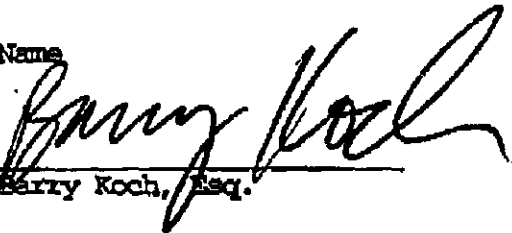
The Respondents Kidder, Peabody & Co., Inc., and Richard R. Reidy be and hereby are liable jointly and severally and shall pay to the National Association of Securities Dealers, Inc. the sum of \$400.00 to represent forum fees.

The National Association of Securities Dealers, Inc. shall retain the \$120.00 claim filing fee previously deposited by the Claimant.

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

ARBITRATORS SIGNATURE

Name

  
Barry Koch, Esq.

Public/Industry

Public

Louis F. Hannigan

Public

Lewis Silver, Esq.

Industry

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ARBITRATORS' SIGNATURE

Name

Public/Industry

\_\_\_\_\_  
Barry Koch, Esq.

Public

\_\_\_\_\_  
Louis F. Hamigan

Public

\_\_\_\_\_  
Lewis Silver, Esq.

Industry

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Name

Public/Industry

Barry Koch, Esq.

Public

Louis F. Hannigan

Public

Lewis Silver, Esq.

Industry

STATE OF *New York*  
COUNTY OF *New York*

S.S.:

On this *26th* day of *December*, 1991,  
before me personally appeared Barry Koch, Esq. known to me to be  
the individual described in and who executed the foregoing  
instrument and be duly acknowledged to me that he/she executed  
the same

*Pearl H. Suttie*

PEARL H. SUTTIE  
Notary Public, State of New York  
No. 4823131  
Qualified in New York County  
Commission Expires January 31, 1993

STATE OF  
COUNTY OF

S.S.:

on this                      day of                      , 1991,  
before me personally appeared Louis F. Hannigan known to me to be  
the individual described in and who executed the foregoing  
instrument and be duly acknowledged to me that he/she executed  
the same

STATE OF  
COUNTY OF

S.S.:

On this                      day of                      , 1991,  
before me personally appeared Lewis Silver, Esq. known to me to  
be the individual described in and who executed the foregoing  
instrument and be duly acknowledged to me that he/she executed  
the same

STATE OF

S.S.:

COUNTY OF

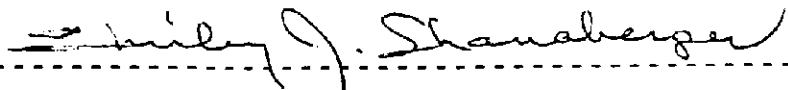
On this \_\_\_\_\_ day of \_\_\_\_\_, 1991,  
before me personally appeared Barry Koch, Esq. known to me to be  
the individual described in and who executed the foregoing  
instrument and be duly acknowledged to me that he/she executed  
the same

STATE OF *NEW JERSEY*

S.S.:

COUNTY OF *PASSAIC*

on this *18th* day of *DECEMBER*, 1991,  
before me personally appeared Louis F. Hannigan known to me to be  
the individual described in and who executed the foregoing  
instrument and be duly acknowledged to me that he/she executed  
the same

  
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SHIRLEY J. SHANABARGER  
NOTARY PUBLIC  
MY COMMISSION EXPIRES FEBRUARY 15, 1994

STATE OF

S.S.:

COUNTY OF

On this \_\_\_\_\_ day of \_\_\_\_\_, 1991,  
before me personally appeared Lewis Silver, Esq. known to me to  
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STATE OF

S.S.:

COUNTY OF

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STATE OF

S.S.:

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the individual described in and who executed the foregoing  
instrument and be duly acknowledged to me that he/she executed  
the same

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STATE OF *New York*

S.S.:

COUNTY OF *Queens*

On this *19* day of *the*, 1991,  
before me personally appeared Lewis Silver, Esq. known to me to  
be the individual described in and who executed the foregoing  
instrument and be duly acknowledged to me that he/she executed  
the same

PATRICIA CESTARE  
NOTARY PUBLIC, State of New York  
No. 4828471  
-- Qualified in Nassau County  
Commission Expires April 30, 1993 --

*Patricia Cestare*