

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Michael E. Labanowski

90-03333

Name of Respondents

Kidder, Peabody & Co., Incorporated
and Roger B. Webb

REPRESENTATION

For Claimant: Daniel A. Ball, Esq.

For Respondent Kidder, Peabody & Co., Inc.: George C. Cabell of Counsel,
Kidder, Peabody & Co., Inc.

For Respondent Roger B. Webb: Mr. Webb was not represented by counsel and did not attend the hearing.

CASE INFORMATION

Statement of Claim filed: November 22, 1990.

Claimant Michael E. Labanowski's ("Claimant") Submission Agreement signed on: November 16, 1990.

Respondent Kidder, Peabody & Co., Inc.'s ("Kidder Peabody") Statement of Answer filed: January 30, 1991.

Respondent Kidder Peabody's Submission Agreement signed on: January 28, 1991.

Respondent Roger A. Webb ("Webb") did not submit an answer or a submission agreement.

HEARING INFORMATION

Hearing Dates/Sessions: November 13, 1991, two sessions
November 14, 1991, two sessions
November 26, 1991, two sessions

Hearing Location: NASD Offices, Washington, D.C.

CASE SUMMARY

Claimant alleged unlawful conduct by Respondents Kidder Peabody and Webb in that they conducted unauthorized trades in Claimant's account and in that they churned Claimant's account by purchasing stocks and options for Claimant's account without concern for Claimant's investment needs and for their benefit. Claimant alleged that the Respondent Kidder Peabody failed to ascertain by adequate investigation the reputation and qualifications of Webb. Claimant alleged that Kidder Peabody failed to adequately supervise Webb and Claimant's account. Claimant alleged that the subject transactions represent individual and collective securities violations, a pattern and practice, and a course of business involving violations of the Rules of Fair Practice of the National Association of Securities Dealers, Inc., the Securities Act of 1933, the Securities Exchange Act of 1934, the Rules of the New York Stock Exchange, Inc., the Rules of the American Stock Exchange, Inc., the statutes and common law of the Commonwealth of Virginia and the Racketeer Influenced and Corrupt Organizations Act, which allegedly entitles Claimant to compensatory damages, punitive damages, treble damages, attorney's fees, forum fees, costs, and interest.

Respondent Kidder Peabody maintained that the claim alleged by the Claimant to recover market losses on certain investments maintained in Claimant's account with the Respondents was caused by Claimant. Respondent Kidder Peabody maintained the Claimant held a securities account with Webb for a number of years, and during that time, Claimant followed Webb from firm to firm. Respondent Kidder Peabody maintained that a course of conduct developed between Claimant and Webb which the Claimant complains of; namely the buying and selling of stock and options for Claimant's account. Kidder Peabody further maintained that it terminated Webb's employment as a result of unauthorized transactions involving other customers' accounts. Kidder Peabody maintained it properly supervised Webb and Claimant's account and that Claimant's account was properly handled at all times.

Respondent Webb did not answer.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$103,472.48, treble damages in the amount of \$310,417.44, punitive damages, attorney's fees, forum fees and costs plus interest.

Respondent Kidder Peabody requested that Claimant's claim be dismissed and that costs and expenses associated with this proceeding be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may 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.

That pursuant to the by-laws of the NASD, the arbitrators determined that Roger B. Webb was required to submit to this arbitration and had notice of Claimant's claim against him. Notwithstanding Webb's failure to submit an executed Submission Agreement, Webb is bound by this Panel's rulings and determination. Attached as Exhibit A to this Award is evidence that Webb received notice of Claimant's Statement of Claim.

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. That Respondents Kidder Peabody and Webb are jointly and severally liable to the Claimant and shall pay to the Claimant the sum of One Hundred Fourteen Thousand Five Hundred Nine and 22/100 Dollars (\$114,509.22); inclusive of interest.
2. That each party shall bear their own costs, including attorney's fees.
3. That all other claims are denied in their entirety.


FORUM FEES

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

That Claimant's hearing session deposit fee is retained to cover the initial hearing session and that forum fees are split between the Claimant and the Respondents jointly and severally, so that the Claimant is assessed forum fees in the amount of \$2250. Claimant is entitled of offset this amount with his hearing session deposit of \$750 so that the amount due from the Claimant is \$1500. Respondents are jointly and severally assessed forum fees in the amount of \$2250.

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

Concurring Arbitrator's Signature


William H. Malloy, Jr., Esq.
Public Arbitrator/Chairman

Date of Decision: January 29, 1992

while the originals remain on file with the NASD.

That pursuant to the by-laws of the NASD, the arbitrators determined that Roger B. Webb was required to submit to this arbitration and had notice of Claimant's claim against him. Notwithstanding Webb's failure to submit an executed Submission Agreement, Webb is bound by this Panel's rulings and determination. Attached as Exhibit A to this Award is evidence that Webb received notice of Claimant's Statement of Claim.

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. That Respondents Kidder Peabody and Webb are jointly and severally liable to the Claimant and shall pay to the Claimant the sum of One Hundred Fourteen Thousand Five Hundred Nine and 22/100 Dollars (\$114,509.22); inclusive of interest.
2. That each party shall bear their own costs, including attorney's fees.
3. That all other claims are denied in their entirety.

FORUM FEES

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

That Claimant's hearing session deposit fee is retained to cover the initial hearing session and that forum fees are split between the Claimant and the Respondents jointly and severally, so that the Claimant is assessed forum fees in the amount of \$2250. Claimant is entitled to offset this amount with his hearing session deposit of \$750 so that the amount due from the Claimant is \$1500. Respondents are jointly and severally assessed forum fees in the amount of \$2250.

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

Concurring Arbitrator's Signature

Richard E. Lauziere

Richard E. Lauziere
Public Arbitrator

Date of Decision: January 29, 1992

while the originals remain on file with the NASD.

That pursuant to the by-laws of the NASD, the arbitrators determined that Roger B. Webb was required to submit to this arbitration and had notice of Claimant's claim against him. Notwithstanding Webb's failure to submit an executed Submission Agreement, Webb is bound by this Panel's rulings and determination. Attached as Exhibit A to this Award is evidence that Webb received notice of Claimant's Statement of Claim.

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. That Respondents Kidder Peabody and Webb are jointly and severally liable to the Claimant and shall pay to the Claimant the sum of One Hundred Fourteen Thousand Five Hundred Nine and 22/100 Dollars (\$114,509.22); inclusive of interest.
2. That each party shall bear their own costs, including attorney's fees.
3. That all other claims are denied in their entirety.

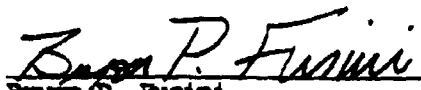
FORUM FEES

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

That Claimant's hearing session deposit fee is retained to cover the initial hearing session and that forum fees are split between the Claimant and the Respondents jointly and severally, so that the Claimant is assessed forum fees in the amount of \$2250. Claimant is entitled to offset this amount with his hearing session deposit of \$750 so that the amount due from the Claimant is \$1500. Respondents are jointly and severally assessed forum fees in the amount of \$2250.

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

Concurring Arbitrator's Signature


Bryon P. Fusini
Industry Arbitrator

Date of Decision: January 29, 1992