

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joyce Mertz, Individually, and
as Trustee of the Joyce T. Mertz
Revocable Living Trust U/A/D December 17, 1989

91-00499

Name of Respondents

Kidder, Peabody & Co., Incorporated
Timothy J. Sheehan

REPRESENTATION

For Claimants ("Claimants"): Stuart Sinai, of Kemp Klein et al.

For Respondents Kidder Peabody & Co., Incorporated ("Kidder") and
Timothy J. Sheehan ("Sheehan"): George C. Cabell of Kidder
Peabody & Co., Incorporated.

CASE INFORMATION

Statement of Claim filed: February 7, 1991.

Claimants' Submission Agreement signed on: February 7, 1991.

Joint Statement of Answer filed by Respondents on: March 26,
1991.

Respondent, Kidder's Submission Agreement signed on: March 27,
1991.

Respondent, Sheehan's Submission Agreement signed on: August 22,
1991. Sheehan's Submission Agreement was not notarized.

AWARD
#91-00499

HEARING INFORMATION

Hearing Dates/Sessions: August 22, 1991/2 sessions.
August 23, 1991/2 sessions.

Hearing Location: Southfield, MI.

CASE SUMMARY

Claimants, alleged that on or about August 10, 1989, Claimants joined an investment club ("Club") in which neither Claimants nor the other women in the Club had significant investment experience. Claimants stated Sheehan had been the Club's investment advisor since its inception and that the Club's members relied upon Sheehan for investment advice. Claimant Joyce Mertz ("Mertz") stated that her involvement with the Club was her first investment experience of any sort. Claimants stated Sheehan was introduced as an agent of Kidder, serving as a registered representative.

Mertz alleged Kidder and Sheehan represented to her that because of Kidder's size, internal organization and research facilities, Claimants could reasonably achieve safe investments. Mertz stated she relied on Respondents' claimed reputation and the following representations: Respondents would carefully manage Claimants' monies; Sheehan would personally supervise and manage Claimants' account; Respondents would analyze prospective investments and would invest Claimants' funds only in investments providing income and safety; Respondents would monitor the market performance of each security purchased for Claimants' account and immediately advise liquidation of those securities in the event of a general market decline or particular weakness of any individual security; continuously advise Claimants with respect to the market performance and prospect of each security purchased for Claimants' account.

Claimants asserted that a Club member mentioned Ames Department Stores ("Ames") and Sheehan implied he had done some research concerning Ames and suggested its purchase. Mertz alleged she called Sheehan and asked him to purchase \$2,000.00 worth of Ames and \$2,000.00 worth of Perry Drug Stores ("Perry"), but Sheehan purchases 2,000 shares of each, instead. Claimants noted none of these purchases was marked unsolicited. Mertz stated she immediately called Sheehan and Sheehan stated he had misunderstood her order. Claimants alleged Sheehan and Kidder initiated a campaign of delay and misinformation which led to the bulk of Claimants' losses instead of selling that number of Ames

and Perry shares necessary to reduce her holdings to the two \$2,000.00 positions she had originally ordered.

Respondents alleged that: in December 1989 Claimants deposited \$40,000.00 into an account at Kidder. Respondents stated that at the same time as the deposit, Sheehan discussed Claimants' previously investments, whereby Mertz informed Sheehan she was dissatisfied with those investments and "wanted to get more active". Respondents alleged that at no time did Mertz tell Sheehan she had no investment experience and wanted "to insure the safety of her funds". Respondents stated that Mertz also discussed with Sheehan the two (2) million dollar divorce settlement she was to receive from her ex-husband.

Respondents alleged Mertz called Sheehan several days later and told him she wanted to purchase 2,000 Ames and 2,000 Perry shares. Sheehan stated he informed her of the amount of cash in her account and then repeated the order back to her. Respondents stated that in January, 1990, Mertz admitted she had made a mistake and meant \$2,000.00 worth of each stock. Sheehan stated he apologized but repeated her original order to her and she acknowledged this fact. Sheehan stated he asked her what she wanted to do and she stated she was not sure, but agreed to wait until Ames' Christmas retail report came out or until the stock could be sold without a loss. Sheehan stated the Perry stock was never discussed. Respondents alleged Mertz opened another account with Sheehan in January, 1990 and continued to deal with Sheehan and that they communicated frequently constantly reviewing the market prices on the Ames and Perry stocks.

RELIEF REQUESTED

Claimants requested: actual damages in the amount of \$25,354.36, plus disgorgement of any and all fees, commissions and profits; attorneys' fees and interest.

Respondents requested: the claim be dismissed, plus costs.

AWARD

The parties have agreed 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.

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

- 1- Respondents, Kidder and Sheehan are liable, jointly and severally, to Claimants in the amount of TWENTY FIVE THOUSAND

AWARD
#91-00499

THREE HUNDRED FIFTY FOUR 00/100 DOLLARS (\$25,354.00);

2- Respondents, Kidder and Sheehan are liable, jointly and severally, to Claimants for interest in the amount of ONE THOUSAND SEVEN HUNDRED SEVENTY 00/100 DOLLARS (\$1,770.00). Interest is awarded in reliance on M.C.L.A. 600.6013;

a- Claimants must deliver to Respondents the 3,000 shares of Ames Department Store. If Claimants have sold those shares, they must produce a confirmation or monthly statement indicating the amount received for the sale of those shares, and that amount is to be deducted from the amount awarded to Claimants;

3- All other claims are dismissed.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$100.00 non-refundable filing fee previously deposited by Claimants and the following Forum Fees are assessed:

4 sessions X \$300 = \$1,200.00.

Forum fees assessed against:

Respondents, jointly and severally, in the amount of \$1,200.00.

Claimants' hearing session deposit of \$300.00 will be refunded by the NASD.

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

ARBITRATOR

/s/
David H. Jarvis, Esq./Public Arbitrator

Date of Decision: September 16, 1991