

PUBLIC

NASD[®]

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimants

William G. & Joan E. Sabol

91-00740

Name of Respondents

Kidder, Peabody & Co., Incorporated
Peter Mott
Timothy Sheehan

REPRESENTATION

For Claimants William G. & Joan E. Sabol ("Claimants"): William G. Sabol represented Claimants.

For Respondents: Kidder, Peabody & Co., Incorporated ("Kidder"), Peter Mott ("Mott"), and Timothy Sheehan ("Sheehan"): Thomas A. Dubbs, of Kidder.

CASE INFORMATION

Statement of Claim filed: March 3, 1991.

Claimants' Submission Agreement signed on: July 8, 1991

Joint Statement of Answer filed by Respondents on: October 11, 1991.

Respondent, Kidder's Submission Agreement signed on: October 11, 1991.

Respondent, Mott's Submission Agreement signed on: December 10, 1991.

Respondent, Sheehan's Submission Agreement signed on: December 16, 1991.

HEARING INFORMATION

Hearing Date/Session: April 8, 1992/1 session.

Hearing Location: Southfield, MI.

CASE SUMMARY

Claimants alleged William G. Sabol ("Sabol") authorized Respondents, through Sheehan, to buy Put Options and paid a commission and "other charges" in connection with said purchase. Sabol alleged he monitored the market closely; discussed this acquisition daily with Sheehan; and informed Sheehan of his intention to hold his investment as long as possible to attempt to break even. Sabol alleged Sheehan intimated he, Sabol, might sell his options to cut his losses; however, Sabol stated he would call Sheehan later

to indicate his position on the matter. Sabol attempted to contact Sheehan but his secretary maintained he was on vacation and that market conditions were causing Sabol's options to increase in value. The following day, Sabol contacted Sheehan's secretary stating he wished to sell his options; he then gave his order to another broker, Steven Coker. Sabol alleged he phoned Sheehan's secretary one (1) hour later and was advised that no transaction occurred because Kidder's records indicated Sabol did not currently own any options. Claimant alleged Sheehan sold the options the prior Wednesday. Claimant discussed this situation with Kidder's Operations Manager who stated Sabol's Friday sell order would be honored by Kidder. Sabol alleged Respondents refused to reverse the trade or make any adjustments and that he was charged a commission and "other charges" and that Respondents churned his account.

Respondents alleged Sabol was in charge of his options account and his instructions were properly carried out. Respondents maintained Sabol's claim is barred by the doctrine of res judicata and moved to dismiss this action. Respondents maintained Sabol phoned Sheehan on Wednesday and instructed him to sell the puts; however, two (2) days later Iraq invaded Kuwait and Sabol tried to sell his puts a second time. Respondents asserted Claimants' naming of Mott exemplifies Claimants' search for someone to blame.

RELIEF REQUESTED

Claimants requested: actual damages in the amount of \$6,816.25; interest from August 15, 1990; costs; and attorneys' fees.

Respondents requested: Claimants' Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

AWARD

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- The Statement of Claim of the Claimants William G. and Joan E. Sabol is dismissed, with prejudice; because Claimants did not sustain their burden of proof with respect to the evidence.
- 2- All other claims are dismissed, with prejudice;
- 3- Each party shall bear its own expenses, including attorneys' fees.

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FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$75.00 non-refundable filing fee previously deposited by Claimant and the following Forum Fees are assessed.

1 session X \$200.00 = \$200.00 minus hearing session deposit of \$200.00 = net \$0.00 due.

Forum fees Assessed Against:

- 1- Claimants, in the amount of \$100.00; in lieu of payment the NASD shall retain the \$200.00 hearing session deposit to offset this amount;
- 2- Respondents, jointly and severally, in the amount of \$100.00; in lieu of payment Respondents, jointly and severally, shall reimburse Claimant the sum of \$100.00.

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

Arbitrator's Signature



David M. Foster/Public Arbitrator

Date of Decision: May 18 1992