

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimants**

J. Robert Horrigan  
Gwendolyn Horrigan

NASD Arbitration  
No. 91-03548

**Name of Respondents**

John R. Smith  
Kidder, Peabody & Co.

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**REPRESENTATION**

For Claimant: Gregg A. Johnson, Esq. - San Diego, Ca.

For Respondent: William H. Phelps, Esq. - Kidder, Peabody & Company

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**CASE INFORMATION**

Statement of Claim filed: November 12, 1991

Claimant's Submission Agreement signed: March 6, 1991

Joint Statement of Answer filed by Respondent: January 12, 1992

Respondent, John R. Smith's Submission Agreement signed: December 30, 1991

Respondent, Kidder, Peabody & Co.'s Submission Agreement signed: January 6, 1992

## **HEARING INFORMATION**

Pre-Hearing Conference: None

Hearing Dates/Sessions: December 21, 1992 - Two Sessions  
January 22, 1992 - Two Sessions

Hearing Location: San Diego, California

## **CASE SUMMARY**

Claimants, J. Robert Horrigan and Gwendolyn Horrigan (Horrigan) alleged that Respondent, John R. Smith (Smith) while employed by Respondent, Kidder, Peabody & Co. (KP) caused a number of securities transactions to occur in Horrigan's account. Said trades were never authorized by Horrigan nor was discretionary power given to Smith by Horrigan. Claimants also alleged that KP breached its duty to properly supervise Smith. Horrigan also alleged that recommendations made were unsuitable.

Respondents alleged that Horrigan was well aware of what was going on in their accounts. On occasion, they gave Smith authority to initiate trades or do whatever Smith saw necessary. It is also alleged that the Claimants received monthly statements and confirmations of the trades and did not enter any complaints at the time of the trades.

## **RELIEF REQUESTED**

Claimants seek general damages in the amount of at least \$75,000.00, interest, costs and punitive damages.

Respondents seek dismissal of the claim in its entirety.

## **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 original remain on file with the NASD.

### **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. Respondents, John R. Smith and Kidder, Peabody & Co., are jointly and severally liable and shall pay to Claimants, J. Robert Horrigan and Gwendolyn Horrigan, the sum of Fifty Three Thousand Dollars and No Cents (\$53,000.00). Said sum includes interest.
2. Claimants' claim for punitive damages is denied.
3. The parties shall each bear their respective cost and fees, including attorneys' fees.
4. Respondents' motion to dismiss on Statutes of Limitations grounds is denied.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed:

1. The NASD shall retain the \$500.00 deposited by the Claimants as an assessment of forum fees for one session.
2. Respondent, Kidder, Peabody & Co. is assessed \$1,500.00 representing fees for three sessions at \$500.00 each.

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

ARBITRATORS

\_\_\_\_\_  
Public/Industry  
Public Chairperson  
Industry Panelist  
Public Panelist

Concurring Arbitrators' Signatures

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Fred T. Killip

Date of Decision: 2/17/93

Served 2/22/93