

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

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In the Matter of the Arbitration BetweenName of Claimant

Earl S. Hill

91-03719

Name of Respondents

Kidder, Peabody & Co., Incorporated  
Stephen J. Schappell

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REPRESENTATION

For Claimant Earl S. Hill ("Claimant"): Jay S. Cohen, Esq.

For Respondents Kidder, Peabody & Co., Inc. and Stephen J. Schappell  
("Respondents"): Richard Kelly, Assistant General Counsel of Kidder, Peabody  
& Co.

CASE INFORMATION

Statement of Claim filed: November 26, 1991.

Claimant's Submission Agreement signed on: September 26, 1991.

Joint Statement of Answer filed by Respondents on: May 29, 1992.

Respondent Kidder, Peabody & Co.'s ("Kidder Peabody") Submission Agreement  
signed on: October 24, 1991.

Respondent Stephen J. Schappell's ("Schappell") Submission Agreement signed  
on: October 31, 1991.

HEARING INFORMATION

Hearing Date/Sessions: September 23, 1992 - two sessions

Hearing Location: NASD Office, Philadelphia, PA

CASE SUMMARY

Claimant alleged that Schappell induced Claimant to purchase Anacomp Inc. stock, Harleysville stock and Scientific Micro Systems, Inc. stock. Claimant alleged that these stocks were unsuitable for him given his stated investment objective of preservation of principal and low risk. Claimant alleged that Schappell knew that he was an unsophisticated investor and a retiree.

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Claimant alleged that Schappell improperly filled out Claimant's New Account Request Form. Claimant alleged that Schappell failed to provide him with accurate advice and encouraged Claimant to hold his investments even when they were declining in value. Claimant alleged that Respondents conduct constituted a breach of their fiduciary duty that they owed Claimant. Claimant alleged that Kidder Peabody breached an implied contract with Claimant. Claimant alleged that Kidder Peabody is liable for the action of Schappell based upon the principles of respondent superior.

Respondents denied each and every allegation of wrongdoing asserted by the Claimant. Respondents maintained that Claimant controlled his account and decided to invest in the stocks that he is now complaining about. Respondents maintained that Claimant's losses were caused by the market crash of 1987. Respondents maintained that Claimant's claims of breach of fiduciary duty and breach of implied contract are legally barred. Respondents maintained that Schappell recommended to Claimant conservative investments, however, Claimant chose not to place his retirement accounts in the conservative investments. Respondents maintained that Claimant sought to place his monies in investments that had growth potential along with the commensurate risk. Respondents maintained that Claimant decided to buy the stocks in question and decided when to sell the stocks. Moreover, Respondents maintained that they furnished Claimant with information regarding the stocks in question and at time Claimant would disregard the advice of Schappell. Respondents maintained that Claimant's claim should be barred under theories of waiver, ratification and estoppel. Respondent maintained that Claimant's claim was barred by all applicable statutes of limitation.

#### RELIEF REQUESTED

Claimant requested damages in an amount in excess of \$50,000.

Respondents requested that Claimant's claim be denied and that costs and fees of this arbitration 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.

#### 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:

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1. That Claimant's claim is denied in its entirety.
2. That the parties shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has decided that the parties are equally assessed forum fees. Two hearing sessions were conducted in this matter at \$400 per session for a total of \$800. Claimant is assessed forum fees in the amount of \$400, however, he is entitled to offset this amount with his hearing session deposit of \$400 so that no more monies are due from the Claimant. Respondents are jointly and severally assessed forum fees in the amount of \$400.

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

Concurring Arbitrators' Signatures  
Name

Public/Industry

  
Joseph L. Farrell, Jr., Esq.

Date of Decision: December 2, 1992

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Concurring Arbitrators' Signatures

Name

Public/Industry

Barbara A. Ash  
Barbara A. Ash

Public

Date of Decision: 7/24/92

NASD Date of Decision: December 2, 1992

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Concurring Arbitrators' Signatures  
Name

Public/Industry

*Charles H. Boyd*  
Charles H. Boyd, Esq.

Date of Decision: December 2, 1992

*Sharon H. Moore*  
11/24/92

