

Book

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Katherine E. Cohen

92-00562

Names of Respondents

Kidder, Peabody & Co., Incorporated  
and Stephen P. Dowdney

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REPRESENTATION

Claimant, Katherine E. Cohen was represented by Frederick D. Heubner, Esq. of Halsell, Fetterman, Martin, Todd & Hokanson, Seattle, Washington.

Respondents, Kidder, Peabody & Co., Inc. and Stephen P. Dowdney were represented by William H. Phelps, Esq. of Kidder, Peabody & Co., Inc., Los Angeles, California.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on March 3, 1992.

An Amended Statement of Claim was filed with the NASD on August 10, 1992.

A Second Amended Statement of Claim was filed with the NASD on November 2, 1992.

Claimant, Katherine E. Cohen's Submission Agreement was signed on January 27, 1992.

A Joint Statement of Answer was filed with the NASD by Respondents, Kidder, Peabody & Co., Inc. and Stephen P. Dowdney on April 6, 1992.

Respondent, Kidder, Peabody & Co., Inc.'s, Submission Agreement was signed on April 2, 1992.

Respondent, Stephen P. Dowdney's Submission Agreement was signed on March 19, 1992.

HEARING INFORMATION

A pre-hearing conference which lasted for one (1) session was held with parties' counsel and the panel chairperson on October 19, 1992.

The hearing dates and number of hearing sessions on each day were as follows:

November 09, 1992 for two (2) sessions;  
November 10, 1992 for three (3) sessions;  
November 11, 1992 for two (2) sessions;  
November 12, 1992 for two (2) sessions; and,  
November 13, 1992 for two (2) sessions.

The hearing location was Scottsdale, Arizona.

CASE SUMMARY

Claimant, Katherine E. Cohen ("Cohen") alleged that Respondents Kidder, Peabody & Co., Inc. ("Kidder, Peabody") and Stephen P. Dowdney ("Dowdney") misrepresented unsuitable investments and fraudulently mismanaged the Claimant's account.

On July 8, 1986, Cohen alleged that she opened a Kidder, Peabody Premium Securities Account ("Account") consisting of investments in municipal bonds, high income securities and cash in a money market fund. However, over time, Cohen's portfolio moved toward a diversified mix of stocks, bonds and partnerships, including the Polaris Aircraft Funds 3, 4 and 5. Cohen asserted that Dowdney and Kidder, Peabody encouraged these risky investments despite her stated conservative, low-risk objectives resulting in a substantial loss of investment. Further, Cohen contended that Dowdney churned the Account in order to make excessive commissions and that Kidder, Peabody failed to supervise the alleged fraudulent activity of its agent, Dowdney.

Additionally, Cohen alleged violations of federal securities laws and the common law of Arizona and Washington, breach of fiduciary duty, breach of contract, negligent misrepresentation and non-disclosure, and violations of various state and federal statutes, including but not limited to, the federal and Arizona racketeering statutes.

In their Joint Statement of Answer, Kidder, Peabody and Dowdney contended that Cohen's allegations were without merit and that she was not entitled to any damages. Kidder, Peabody and Dowdney asserted that Cohen was a savvy and sophisticated businesswoman with a long history of involvement in the business and professional worlds. Kidder, Peabody and Dowdney asserted that the decline in Cohen's securities portfolio was the result of the unforeseeable market debacle of October 1987 and the demands Cohen was placing on the account. Cohen approved every trade in her account and made all investment decisions in her account. Therefore, Cohen not Dowdney controlled her account and her account cannot have been churned since the element of control by the broker was lacking. Kidder, Peabody and Dowdney

also asserted that Cohen's lavish spending lifestyle which required large cash withdrawals from her account also contributed heavily to the decline in her portfolio.

RELIEF REQUESTED

Cohen requested an award of \$1,000,000.00 in compensatory damages, \$2,000,000.00 in statutorily authorized treble damages, punitive damages, all costs and attorneys' fees, and any other relief as may be deemed just and proper

Kidder, Peabody and Dowdney requested that the original Statement of Claim and as amended be dismissed 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 originals remain on file with the NASD.

A Motion to Compel Production of Documents and for telephonic testimony by a witness was resolved by agreement of the parties during a pre-hearing telephone conference with the panel chair on October 19, 1992. The parties also stipulated that the Second Amended Statement of Claim could be filed as it was not a substantive amendment, but to correct numbers. Therefore, this pleading was allowed.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and the parties' briefs, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent, Kidder, Peabody & Co., Inc. is liable for and shall pay to the Claimant, Katherine E. Cohen compensatory damages in the amount of One hundred fifty thousand dollars and no cents (\$150,000.00), plus simple interest at the rate of 6% per annum beginning to accrue thirty (30) days after the date this award is served on the parties and continuing to accrue until the award is paid in full;
- 2) The claims asserted against Respondent, Stephen Dowdney by Claimant, Katherine E. Cohen are dismissed in their entirety;
- 3) Claimant, Katherine E. Cohen's claims for treble and punitive damages are dismissed in their entirety; and,
- 4) All parties shall bear their own costs, expenses and attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$250.00 non-refundable claim filing fee and the \$1000.00 hearing session deposit previously made with the NASD by Cohen. Kidder, Peabody is directed to directly reimburse Cohen for these sums. Kidder, Peabody is assessed additional Forum Fees in the amount of \$10,300.00.

Forum Fees were calculated on the basis of \$1000.00 per hearing session for eleven hearing sessions and \$300.00 for the single session prehearing conference and the additional Forum Fees assessed to the parties are payable to the NASD.

Concurring Arbitrators' Signatures  
Name

/S/ William M. Howard  
William M. Howard, Esq.  
Presiding Chairman  
Public Arbitrator

December 7, 1992  
Dated

/S/ Ted R. Pickett  
Ted R. Pickett  
Panelist  
Public Arbitrator

December 7, 1992  
Dated

/S/ Marvin J. Klein  
Marvin J. Klein  
Panelist  
Industry Arbitrator

December 4, 1992  
Dated

Date award served by the NASD: December 14, 1992