



N.A.S.D. AWARD

Arbitration

**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 Claimant

Michael Siani

92-00886

Name of Respondents

Kidder, Peabody & Co., Incorporated  
Mark R. Serruto

REPRESENTATION

For Claimant: Thomas Brodie, Esq. solo practitioner.

For Respondents: Thomas Dubbs, Esq. in house counsel of Kidder Peabody.

CASE INFORMATION

Claimant's Submission Agreement signed on: January 15, 1992.

Statement of Answer filed by Respondents Kidder Peabody & Co., Inc. ("Kidder Peabody") and Mark Serruto on: July 2, 1992.

Respondent Kidder Peabody's Submission Agreement signed on: July 1, 1992.

Respondent Mark Serruto's Submission Agreement signed on: September 15, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: December 1, 1992 - 2 Sessions  
December 2, 1992 - 2 Sessions  
December 8, 1992 - 1 Session

Hearing Location: NASD Offices located in New York, New York.

CASE SUMMARY

Claimant alleged that in the second half of 1989 Claimant deposited \$110,000.00 in account with Respondent Kidder Peabody under the investment supervision of Respondent Mark Serruto, Senior V.P. and registered Securities Representative, and Respondent Mark Serruto failed to follow the investment instructions specifically given by Claimant.

Claimant further alleged that Respondents completed investments without prior notification, authorization or even an explanation describing the investments. Claimant further alleged churning by Respondents and unauthorized and illegal trades in unsuitable investments with the failure to utilize any discretion or fiduciary responsibility for the customer's behalf. Claimant further alleged that Respondents blatantly disregarded a court order which directed Respondent Kidder Peabody to distribute \$30,000.00 from the account to Claimant's wife as part of a divorce proceeding.

Respondents maintained that Claimant's investment objectives were trading profits, to which Claimant entered into a margin agreement. Respondents further maintained that, consistent with Claimant's investment objective, Respondent Mark Serruto recommended from time to time the purchase and sale of various securities, all of which were authorized by Claimant. Respondent further maintained that they did not receive the court order until late November or December 1990 by the time which remaining funds had already been withdrawn; moreover, Respondent Mark Serruto argued that Claimant had instructed him not to release the funds.

#### **RELIEF REQUESTED**

Claimant requested \$122,428.00 in compensatory damages. At the close of the hearing, Claimant also amended the claim to seek punitive damages.

Respondents requested all claims be denied plus costs and forum fees.

#### **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. Respondent Kidder Peabody be and hereby is liable and shall pay Claimant the sum of \$35,000.00 including interest.
2. Respondent Mark Serruto be and hereby is liable and shall pay Claimant the sum of \$35,000.00.
3. Claimant request for punitive damages is denied.
4. Each party shall bear its own costs including attorneys' fees.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

5 sessions x \$750.00 = \$3,750.00

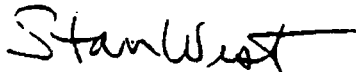
Claimant Siani be and hereby is liable and shall pay to the NASD the sum of \$1,250.00 to represent forum fees.

Respondent Kidder Peabody be and hereby is liable and shall pay to the NASD the sum of \$1,250.00 to represent forum fees.

Respondent Mark Serruto be and hereby is liable and shall pay to the NASD the sum of \$1,250.00 to represent forum fees.

The NASD shall retain the \$200.00 filing fee previously deposited by Claimant.

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

**ARBITRATOR SIGNATURE**

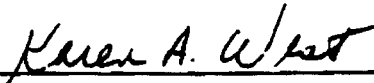
Stan West  
Public Arbitrator

Date of Decision: January 29, 1993

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 7<sup>th</sup> day of January, 1993, before me personally appeared Stan West known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



**KAREN A. WEST**  
Notary Public, State of New York  
No. 34-455646  
Qualified in New York County  
Commission Expires April 14, 19

**NASD**

Award #92-00886

Arbitration

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

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

5 sessions x \$750.00 = \$3,750.00

Claimant Siani be and hereby is liable and shall pay to the NASD the sum of \$1,250.00 to represent forum fees.

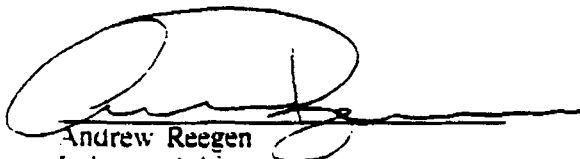
Respondent Kidder Peabody be and hereby is liable and shall pay to the NASD the sum of \$1,250.00 to represent forum fees.

Respondent Mark Serruto be and hereby is liable and shall pay to the NASD the sum of \$1,250.00 to represent forum fees.

The NASD shall retain the \$200.00 filing fee previously deposited by Claimant.

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

**ARBITRATOR SIGNATURE**



Andrew Reegen  
Industry Arbitrator

Date of Decision: January 29, 1993

STATE OF: New York

S.S.I.

COUNTY OF: New York

On this 29<sup>th</sup> day of December 1992, before me personally appeared Andrew Reegan known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



MARK O. GLUT  
Notary Public, State of New York  
No. 4088100  
Qualified in Queens County  
Commission Expires April 20, 1994

**NASD**

Award #92-00886

Arbitration

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

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

5 sessions x \$750 = \$3750

Claimant Siani be and hereby is liable and shall pay to the NASD the sum of \$1,250.00 to represent forum fees.

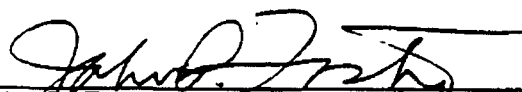
Respondent Kidder Peabody be and hereby is liable and shall pay to the NASD the sum of \$1,250.00 to represent forum fees.

Respondent Mark Serruto be and hereby is liable and shall pay to the NASD the sum of \$1,250.00 to represent forum fees.

The NASD shall retain the \$200.00 filing fee previously deposited by Claimant.

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

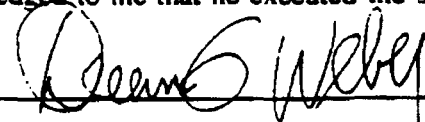
**ARBITRATOR SIGNATURE**

  
John P. Foster  
Public Arbitrator

Date of Decision: January 29, 1993

STATE OF: New York S.S.:  
COUNTY OF: ~~New York~~ Nassau

On this 29 day of Dec., 1992, before me personally appeared Esq. known and John P. Foster known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



DEAN G. WEBER  
NOTARY PUBLIC, State of New York  
No. 41-4863451  
Qualified in Queens County  
Commission Expires June 2, 1994