

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Gerald R. and Linda M. Bryan

PUBLIC

92-00980

Name of Respondent(s)

Kidder, Peabody & Co., Incorporated
Thomas W. Fox

REPRESENTATION

For Claimants Gerald R. and Linda M. Bryan: Louis C. Alvin, Esq. sole practitioner.

For Respondents Kidder, Peabody & Co., Inc. and Thomas W. Fox: Richard Kelly, Esq. in-house counsel at Kidder Peabody.

CASE INFORMATION

Statement of Claim filed: March 17, 1992.

Claimant's Submission Agreement signed on: February 28, 1992.

Respondents filed an Answer at the hearing, but did not file a Submission Agreement as required by the Code of Arbitration Procedure.

CASE SUMMARY

Claimants alleged that Respondent Fox, a stockbroker employed by Respondent Kidder, Peabody & Co., Inc., approached Claimants about the concept of investing their life savings in the stock market, and he improperly and fraudulently induced Claimants to sign documents alleged to be a Customer's Agreement and Option Agreement to hire Respondents as their investment advisors by doing improper acts; and advising and misrepresenting to Claimant that falsehoods were in fact were true when Respondent Fox knew or should have known were not true. Claimant further alleged that in reliance on such misrepresentations, improper and fraudulent actions, Claimant Gerald Bryan signed the documents while Claimant Linda Bryan never signed the documents with any of the Respondents. Claimants further alleged that Respondents breached

their oral contract that Respondents would invest Claimants' life savings in a wise and prudent manner, Respondents were negligent, violated the Securities Act of 1933, the Investment Advisors Act, Pennsylvania Act, Unfair Trade Law and made various misrepresentation.

Respondent maintained that Claimants opened a securities account with Respondent Fox at Blinder Robinson with an investment objective to create an income flow and to speculate in the equities market with short term activity using margin. Respondents further maintained that Respondent Fox left Blinder Robinson in 1990 and after expressing desire to transfer the account the Claimants signed forms to transfer the accounts, which Respondent Fox was not present when Claimants signed the forms. Respondents further maintained that Claimants received confirmation of all trades, and receipt of these confirmations and account statements legally bar Claimants from contending there were unauthorized trades.

RELIEF REQUESTED

Claimants requested: \$65,000.00 in compensatory damages plus punitive damages, plus loss of interest and costs of the suit and attorneys' fees.

Respondents requested: that all claims be dismissed.

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 Kidder, Peabody & Co., Inc. and Fox be and hereby are liable, jointly and severally, and shall pay Claimants the sum of \$40,000.00.
2. Claimants' claim for punitive damages, interest, expenses and attorneys' fees be and hereby are denied.
3. Each party shall bear its own costs.
4. Respondents Kidder, Peabody & Co. Inc. and Thomas W. Fox be and hereby are liable, jointly and severally, and shall pay Claimants the sum of \$75.00 to represent filing fee.

FORUM FEES

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


2 session x \$500.00 = \$1,000.00 less \$500.00 hearing session
deposit = \$500.00 net due.

Forum Fees Assessed Against:

Respondents Kidder, Peabody & Co., Inc. and Thomas W. Fox be and hereby are liable, jointly and severally, and shall pay the NASD the sum of \$500.00 to represent forum fees.

The NASD shall retain the \$150.00 filing fee and \$500.00 hearing session deposit previously deposited by Claimants.

ARBITRATION PANEL



Steven B. Larchuk, Esq./Chairperson

Public Arbitrator

Paul H. McKenna

Industry Arbitrator

Randall L. Katz

Public Arbitrator

Date of Decision: February 8, 1993

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