

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

George J. Kirn, M.D.  
Nancy T. Kirn

NASD Arbitration  
No. 92-01161

Name of Respondent(s)

Kidder, Peabody & Company, Inc.  
Gregory F. Wilbur

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REPRESENTATION

For Claimants: Steven E. Loquaci, Esq., Smith & Loquaci, San Jose, California

For Respondents: Eric G. Wallis, Esq., Crosby, Heafey, Roach & May, Oakland, California

CASE INFORMATION

Statement of Claim filed: March 30, 1992

Claimants' Submission Agreement signed: March 27, 1992

Joint Statement of Answer filed by Respondents: November 5, 1992

Respondents' Submission Agreements signed as follows:

Kidder, Peabody & Co., Inc.: November 10, 1992

Gregory F. Wilbur: June 16, 1992

HEARING INFORMATION

Pre-Hearing Conference Dates/Sessions:

June 14, 1993 (one session)

June 25, 1993 (one session)

August 19, 1993 (one session)

October 1, 1993 (one session)

Hearing Dates/Sessions:

October 4, 1993 (one session)

October 5, 1993 (two sessions)

October 19, 1993 (two sessions)

October 20, 1993 (two sessions)

November 8, 1993 (two sessions)

Hearing Location:

San Francisco, California

**CASE SUMMARY**

Claimants alleged unsuitability with respect to their investments in Silver Lisco and Delphi Information Systems stocks. Claimants further alleged breach of fiduciary duty, fraud and deceit, negligent misrepresentation, violation of Rule 405 of the New York Stock Exchange, Inc., violation of National Association of Securities Dealers, Inc. (NASD) Rules of Fair Practice, negligence and negligent supervision against Kidder, Peabody & Company, Inc. Claimants further alleged that Kidder, Peabody & Co., Inc. is liable to Claimants for damages pursuant to the Doctrine of respondeat superior.

Respondents denied Claimants' allegations and alleged that Claimants were involved and knowledgeable investors. Respondents further alleged that the risks associated with Claimants' investments were fully explained to, and fully understood by Claimants.

**RELIEF REQUESTED**

Claimants requested:

1. Damages in an amount in excess of \$200,000.00 or such other amount as may be proven at hearing;
2. Interest;
3. Reasonable attorney's fees;
4. Costs; and
5. Such other relief as the arbitration panel may deem appropriate.

Respondents requested dismissal of Claimants' claims.

**OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Award in this matter may be executed in either 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, the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution

of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for and shall pay to Claimants the sum of \$61,000.00, inclusive of interest, and in satisfaction of Claimants' claims.

2. Claimants' claim for punitive damages is denied.

3. The parties shall each bear their respective costs including attorney's fees.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$750.00 hearing session deposit previously deposited by the Claimants. Forum fees are assessed against:


Respondents, jointly and severally, in the amount of \$7,950.00, calculated as follows: Four pre-hearing sessions times \$300.00/session plus nine hearing sessions times \$750.00/session.

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

**ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
Joanna Leighton, Esq.	Public Arbitrator
Robert B. Lashly	Public Arbitrator
David H. Brazil	Industry Arbitrator

**Concurring Arbitrators' Signatures**

Joanna Leighton, Esq.  
  
Robert B. Lashly

David H. Brazil

Date of Decision: \_\_\_\_\_

Served 11/23/93