

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimant**

Michelle Owen, as Trustee for the  
Arthur Fitzgerald Living Trust

NASD Arbitration  
No. 92-02158

**Name of Respondents**

Kidder, Peabody & Co., Inc.  
Patrick J. Sahli

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**REPRESENTATION**

For Claimant: H. Thomas Fehn, Esq. - Fields, Fehn and Sherwin, Los Angeles, Ca.

For Respondents: William Phelps, Esq. - Kidder, Peabody & Co. Inc. - Los Angeles, Ca.

**CASE INFORMATION**

Statement of Claim filed: June 30, 1992

Claimant's Submission Agreement signed: February 29, 1992

Joint Statement of Answer filed by Respondents: October 14, 1992

Respondent, Kidder, Peabody & Co. Inc.'s Submission Agreement signed:  
September 1, 1992

## **HEARING INFORMATION**

Pre-Hearing Conference: None

Hearing Date/Sessions: May 4, 1993 - Two Sessions

Hearing Location: San Francisco, California

## **CASE SUMMARY**

Claimant, Michelle Owen, alleged that Respondents, Kidder, Peabody & Co., Inc. and Patrick James Sahli, engaged in wrongdoing involving the purchase and sale of limited partnership investments, risky mutual funds and speculative securities which were unsuitable for Claimant's investment objectives.

Respondents alleged that Claimant, Michelle Owen, with the active involvement of her husband, affirmatively chose to invest and manage the assets of the Trust as if they were her own. Respondents also alleged that all transactions were approved in advance and that any decline in the value of the Trust's assets was largely due to a regular pattern of withdrawals engaged in by Claimant and not as the result of inappropriate or excessive trading.

## **RELIEF REQUESTED**

Claimants sought to recover damages of \$300,000.00, interest, punitive damages, costs and attorneys' fees.

Respondents sought dismissal of the claim 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.

## **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 Patrick J. Sahli, shall purchase at the original purchase price from Claimant, Michelle Owen, as Trustee, Thirty Percent (30%) of all Claimants investments placed at issue before the panel, less 30% of returns received to date.
2. Claimant's claim for punitive damages is denied.
3. The parties shall each bear their respective costs and fees, including attorneys' fees.
4. Claimant's claim for interest is denied.

## **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed:


- a. The NASD shall retain the \$750.00 hearing session deposit as an assessment of forum fees for one session.
- b. Respondents are jointly and severally assessed forum fees of \$750.00.

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

**ARBITRATORS**

<u>Name</u>	<u>Public/Industry</u>
Leonard Greenwold	Public Panelist
Joanna Leighton, Esq.	Public Chairperson
Frank Weaver	Industry Panelist

**Concurring Arbitrators' Signatures**

  
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**DATE SERVED: 06/21/93**

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