

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimant(s)**

Michael Browne

NASD Arbitration  
No.92-02338

**Name of Respondent(s)**

Kidder, Peabody & Co., Inc.  
Prudential-Bache Securities, Inc.  
Brian Tremain

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**REPRESENTATION**

For Claimant: Nicolas C. Vaca, Esq., Vaca & Vaca, Walnut Creek, California

For Respondent Kidder, Peabody: William H. Phelps, Esq., Kidder, Peabody & Co., Los Angeles, California

For Respondents Prudential-Bache & Brian Tremain: Steven M. Malina, Esq., Prudential Securities, Chicago, IL 60606

**CASE INFORMATION**

Statement of Claim filed: July 14, 1992

Claimant's Submission Agreement signed: May 21, 1992

Statement of Answer filed by:

Kidder, Peabody: September 11, 1992

Prudential & Tremain: September 9, 1992

Respondents' Submission Agreements Signed:

Kidder Peabody: September 10, 1992

Prudential: September 4, 1992

Brian Tremain: August 28, 1992

### **HEARING INFORMATION**

Hearing Dates / Sessions:	May 18, 1993	-	1 session
	May 19, 1993	-	2 sessions
	May 20, 1993	-	1 session

Hearing Location: San Francisco, California

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, fraudulent misrepresentation, gross negligence, failure to supervise, and lack of suitability with respect to the recommendation and effectuation of investment trading and strategies in common stocks, limited partnerships and other securities.

Respondents each denied all allegations of wrongdoing. Respondent Kidder, Peabody asserted that Claimant's account was profitable while at Kidder, and indicated that Claimant approved all transactions in advance and fully understood the nature of the investments he was making. Respondents Prudential and Tremain asserted that all investments made by Claimant were made only after detailed discussions with and careful consideration by Claimant, and that any losses sustained by Claimant were the result of market conditions rather than the actions of Respondents.

### **RELIEF REQUESTED**

Claimant requested compensatory damages, as amended at hearing, of \$168,000.00 against Kidder, Peabody and Brian Tremain, and \$99,000 against Prudential and Brian Tremain, plus punitive damages, costs of arbitration and attorney's fees.

Respondents each requested dismissal of all claims, and an award of costs of arbitration.

### **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 original 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. All claims asserted by Claimant, including the claim for punitive damages, are dismissed in their entirety.
2. The parties shall each bear their respective attorneys' fees.
3. Respondents' requests for costs are granted as follows:
  - (a) Claimant shall pay to Respondent Kidder, Peabody the sum of \$1,000.00
  - (b) Claimant shall pay to Respondents Prudential and Brian Tremain the sum of \$2,000.00

### FORUM FEES

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

Three sessions @ \$750 / session	=	\$2,250.00
<u>Credit for deposit received</u>	=	<u>\$ 500.00</u>
Balance Due		\$1,750.00

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

### ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
Kathleen H. Casey	Public Chairperson
William A. Hage	Public Panelist
Richard B. Bullock	Industry Panelist

### Concurring Arbitrators' Signatures

Kathleen H. Casey

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Date of Decision: May 28, 1993

Date Served: 06/08/93

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Three sessions @ \$750 / session	=	\$2,250.00
<u>Credit for deposit received</u>	=	<u>\$ 500.00</u>
Balance Due		\$1,750.00

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### ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
Kathleen H. Casey	Public Chairperson
William A. Hage	Public Panelist
Richard B. Bullock	Industry Panelist

### Concurring Arbitrators' Signatures

William A. Hage

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

Date Served: 06/08/93

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### ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
Kathleen H. Casey	Public Chairperson
William A. Hage	Public Panelist
Richard B. Bullock	Industry Panelist

### Concurring Arbitrators' Signatures

Richard B. Bullock

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Date of Decision: 5/20/93

Date Served: 06/08/93