

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimant(s)**

Michael Cohen

NASD Arbitration  
No. 92-02703

**Name of Respondent(s)**

Kidder, Peabody & Co., Inc  
Kerry M. Day  
Myron L. Blackman

---

**REPRESENTATION**

For Claimant: Raymond Gaitan, Esq., Greenbaum And Ferentz, Newport Beach, California

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

**CASE INFORMATION**

Statement of Claim filed: August 11, 1992

Claimant's Submission Agreement signed: August 3, 1992

Joint Statement of Answer filed by Respondents: October 22, 1992

Respondents' Submission Agreements signed as follows:

Kidder, Peabody & Co., Inc.: October 21, 1992

Myron L. Blackman (aka Michael Blackman): December 4, 1992

Respondent Kerry M. Day did not submit a Submission Agreement. However, he appeared at the hearing and is subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Section 12 of the Code of Arbitration Procedure.

### **HEARING INFORMATION**

Pre-Hearing Conference: None

Hearing Date(s)/Sessions: April 27, 1993 (two sessions)

Hearing Location: Los Angeles, California

### **CASE SUMMARY**

Claimant alleged breach of contract, breach of fiduciary duty, churning, conversion, breach of duty to disclose, -breach of duty to supervise, fraud, mismanagement of account by Respondents, negligence, violation of State Securities Laws, unauthorized trading, unjust enrichment and unsuitability with respect to various common stock transactions.

Respondents denied Claimant's allegations of wrongdoing and alleged that Claimant is an exceptionally knowledgeable and educated investor, with years of trading experience. Respondents further alleged that Claimant authorized and ratified each and every transaction in Claimant's account.

### **RELIEF REQUESTED**

Claimant requested:

1. General damages in the amount of \$53,000.00;
2. Punitive and exemplary damages in the amount of \$159,000.00;
3. Prejudgment interest, according to proof;
4. Costs of suit and attorneys fees; and
5. Such other and further relief as the panel may deem proper.

Respondents requested that the Statement of Claim be denied in its entirety, and that Claimant take nothing by his Claim.

### **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. All claims by Claimant, including the claim for punitive damages, are dismissed.
2. The parties shall each bear their respective costs including attorney's fees.

### **FORUM FEES**

Pursuant to Section 43c 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 Claimant. Forum fees are assessed against:

Respondents, jointly and severally, in the amount of \$1,500.00, calculated as follows: Two 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>
-------------	------------------------

Public Arbitrator
Public Arbitrator
Public Arbitrator

Concurring Arbitrators' Signatures

George M. Wiener  
George M. Wiener, Esq.

Date of Decision: April 27, 1993

Date Served: 05/25/93