

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

---

**In the Matter of the Arbitration Between**

**Name of Claimants**

John C. and Lois Stegeman

92-02751

**Name of Respondents**

Kidder, Peabody & Co., Incorporated  
James I. Tribble

---

**REPRESENTATION**

For Claimants, John C. and Lois Stegeman: Daniel J. Stephenson, Esq. of  
Dykema Gossett.

For Respondents, Kidder, Peabody & Co., Incorporated and James I. Tribble:  
Richard Kelly, Esq. of Kidder, Peabody & Co., Incorporated.

**CASE INFORMATION**

Statement of Claim filed by Claimants on: August 14, 1992.  
Claimants' Submission Agreement signed on: August 11, 1992.

Statement of Answer filed by Respondents, Kidder, Peabody & Co., Incorporated  
and James I. Tribble on: November 5, 1992.  
Respondent James I. Tribble's Submission Agreement signed on November 2,  
1992.  
Respondent Kidder, Peabody & Co., Incorporated's Submission Agreement  
signed on October 23, 1992.

**HEARING INFORMATION**

Hearing Dates/Sessions:           June 22 - One session  
  June 23 - Two sessions

Hearing Location: American Arbitration Association - Southfield, Michigan

### **CASE SUMMARY**

Claimants allege that they opened an account with Respondent, James I. Tribble after receiving a cold call. Claimants assert that prior to their association with Tribble, they had never invested any significant money in the stock market. Claimants assert that on more than one occasion, Tribble promised that their portfolio would net them a 10 percent annual gain. Claimants allege that they trusted and relied exclusively on Tribble's investment recommendations at all times.

Claimants allege that Tribble exercised de facto "control" of the account, and that they relied exclusively and in good faith on the recommendations of Tribble. Claimants assert that Tribble used pressure tactics and promises of high performance to garner their "consent" to buy/sell transactions. Claimants allege that Tribble "churned" their account resulting in poor portfolio performance and abnormally high commissions. Claimants assert that Tribble would purchase, sell and then repurchase the same stock within weeks, resulting in little or no gain for the portfolio but generating handsome commissions for him.

Respondents generally deny the allegations of wrongdoing contained in the Statement of Claim. Respondents deny that the Claimants' account was churned and maintain that Tribble did not "control" Claimants' account, and that the turnover was not excessive given the Claimants' investment objectives and financial condition. Respondents maintain that Claimants' investment objective was appreciation with risk. Respondents maintain that the turnover of Claimants' account was not for the purpose of generating commissions and that neither Tribble nor Kidder, Peabody & Co., Incorporated acted with intent to defraud or with reckless disregard of the Claimants' best interests. Respondents assert that Tribble can handle accounts on a fee basis, with a maximum annual fee of 2% and no commissions. Respondents assert that Claimants repeatedly dismissed Tribble's suggestion that they switch to such a fee basis account, saying that the commissions were not an issue big enough to consider bothering to make the change. Finally, Respondents maintain that Claimants have overstated their losses.

### **RELIEF REQUESTED**

Claimant requested damages in excess of \$100,000.00 to compensate for the reduced net worth of their account with Respondents (calculated from May 1989 to June 25, 1992), plus interest, costs and fees.

Respondent requested that the Statement of Claim be denied in its entirety.

**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. The Claimant's claims are hereby dismissed in all respects;
2. Each party shall bear their respective costs of this action, including attorney's fees, except that Respondent, Kidder shall re-imburse to the Claimant the sum of \$950.00 Claimant previously deposited with the NASD, Inc.

**FORUM FEES**

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

\$200.00 - Non-refundable filing fee  
\$2,250.00 - Hearing session fees (3 sessions x \$750.00)

1. Total forum fees in the amount of \$2,450.00 are hereby assessed against Respondent, Kidder, Peabody & Co., Inc.
2. As stated above, Kidder, Peabody & Co., Inc. shall reimburse to the Claimant the sum of \$950.00 which the Claimant previously paid to the NASD, Inc.
3. Kidder, Peabody & Co., Inc. is hereby directed to pay the balance of \$1,500.00 to the NASD, Inc.

Concurring Arbitrator's Signature  
Name

Public Arbitrator

R. Edward Lawton  
R. Edward Lawton

Executed on:  
~~Date of Decision:~~ June 24, 1993

Date of Decision: July 28, 1993

**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. The Claimant's claims are hereby dismissed in all respects;
2. Each party shall bear their respective costs of this action, including attorney's fees, except that Respondent, Kidder shall re-imburse to the Claimant the sum of \$950.00 Claimant previously deposited with the NASD, Inc.

**FORUM FEES**

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

\$200.00 - Non-refundable filing fee  
\$2,250.00 - Hearing session fees (3 sessions x \$750.00)

1. Total forum fees in the amount of \$2,450.00 are hereby assessed against Respondent, Kidder, Peabody & Co., Inc.
2. As stated above, Kidder, Peabody & Co., Inc. shall reimburse to the Claimant the sum of \$950.00 which the Claimant previously paid to the NASD, Inc.
3. Kidder, Peabody & Co., Inc. is hereby directed to pay the balance of \$1,500.00 to the NASD, Inc.

Concurring Arbitrator's Signature  
Name

Industry Arbitrator

  
Norman A. Samson

Executed on:

~~Date of Decision:~~

6-24-93

Date of Decision: July 28, 1993

**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. The Claimant's claims are hereby dismissed in all respects;
2. Each party shall bear their respective costs of this action, including attorney's fees, except that Respondent, Kidder shall re-imburse to the Claimant the sum of \$950.00 Claimant previously deposited with the NASD, Inc.

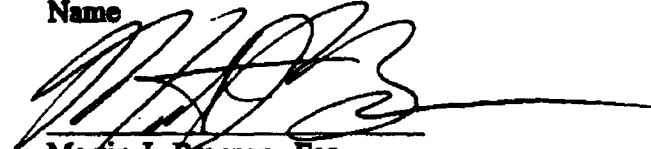
**FORUM FEES**

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

\$200.00 - Non-refundable filing fee  
\$2,250.00 - Hearing session fees (3 sessions x \$750.00)

1. Total forum fees in the amount of \$2,450.00 are hereby assessed against Respondent, Kidder, Peabody & Co., Inc.
2. As stated above, Kidder, Peabody & Co., Inc. shall reimburse to the Claimant the sum of \$950.00 which the Claimant previously paid to the NASD, Inc.
3. Kidder, Peabody & Co., Inc. is hereby directed to pay the balance of \$1,500.00 to the NASD, Inc.

Concurring Arbitrator's Signature  
Name

  
Martin J. Brosnan, Esq.

Public Chairperson

Date of Decision: July 28, 1993