

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Albert Fasano & Ronald E. Fasano/Fasano
Albert & Ronald E Fasano TTEES/Fasano Co
Albert Fasano & Donatella Fasano, Jt ten

vs.

Award
92-02786

Name of Respondents

Kidder, Peabody & Co., Incorporated
Robert D. Sherwin

REPRESENTATION

For Claimants, Albert and Ronald E. Fasano for Fasano Corp., Inc. and Fasano Corporation Profit Sharing Plan ("Claimants"), Russell R. Sicard, Esq., from the law firm of Sicard, Bruzzese and Connor, Ltd., located in Warwick, Rhode Island.

For Respondents, Kidder Peabody & Co., Inc. ("Kidder") and Robert D. Sherwin ("Sherwin"), Marc Thomas, Esq., in-house counsel, located in New York, New York.

CASE INFORMATION

Statement of Claim was filed on August 10, 1992.

Claimant's Submission Agreement was signed on August 10, 1992.

Motion to Bar Answer was filed on October 29, 1992, November 5, 1992, November 20, 1992 and November 20, 1992.

Joint Statement of Answer was filed by Kidder and Sherwin on November 10, 1992.

Kidder's Submission Agreement was signed on December 10, 1992.

Sherwin's submission Agreement was signed on November 25, 1992.

Respondents' Reply to Motion to Bar was filed on December 9, 1992.

HEARING INFORMATION

Pre-Hearing Conference: August 16, 1993 - 1 session

Hearing Dates/Sessions: October 21, 1993 - 2 sessions
April 12, 1994 - 2 sessions
April 13, 1994 - 2 sessions

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 260 Franklin Street, Boston Massachusetts.

CASE SUMMARY

Claimants allege that their primary investment objective was for safety of income and principal and that Sherwin failed to protect the company's investment by concentrating the bulk of the corporation's funds into one stock, First Exec CP Cum Pfd. Claimants also allege that Sherwin failed to inform them of the performance of the stock until the value was reduced by nearly fifty percent. Claimants further allege that even under these circumstance, Sherwin encouraged him to hold on to the stock which portfolio was composed of 50 percent in junk bonds.

Claimants state they lost 100 percent of their investment. Claimant also state that Kidder was a financial advisor for First Executive Corp and Respondents must have known about the contents of the portfolio. Claimants further state that Sherwin informed them that he received incorrect data from Kidder's main office and that Kidder was liable for the losses.

Respondents assert four affirmative defenses, deny liability and deny any wrongdoing. Respondents contend that an account in the name of the corporation was opened with the purchase of \$40,000 of Old Stone Preferred Stock. Respondents also contend that the corporation's investment objective was to achieve the highest level of income as well as to provide liquid investment for the corporation's funds. Respondents further contend that Claimants were informed of the risks involved but they were attracted to the relatively high yield of Old Stone Preferred.

Respondents state that when Old Stone was "called", Claimants reinvested the proceeds into First Executive Series F Preferred under the theory that this was a similar security which was consistent with the investment objectives. Respondents maintain that this First Executive Series F Preferred was less risk than Old Stone Preferred and had an "A" rating from Standards & Poors.

Respondents state that Sherwin reasonably believed that the price of the stock would rebound, but that hindsight has proven that the junk bond market declined although it subsequently rebound somewhat. Respondents also state that Sherwin did not have an ongoing obligation to

monitor an investment after a decision to purchase is made. Respondents maintain that they had no obligation to diversify a portfolio unless a power of attorney is given.

RELIEF REQUESTED

Claimants request an award of \$59,048.75 representing a fund reimbursement for the losses and \$9,957.18 in interest.

Respondents request that the Statement of Claim be dismissed with prejudice with costs and forum fees to be awarded to Kidder.

OTHER ISSUES CONSIDERED & DECIDED

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 and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Motion to Bar is denied.
2. Kidder and Sherwin are hereby jointly and severally liable to Claimants and shall pay Claimants **TWENTY FIVE THOUSAND DOLLARS AND ZERO CENTS** (\$25,000.00). No interest is awarded.
3. The claim for attorney's fee is denied.
4. The claim for costs is denied.
5. All other claims for relief are denied.

FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed:

Non-refundable Filing Fee: \$150.00

Hearing Session Fees: \$500.00 x 6 sessions = \$3,000.00

Pre-Hearing Conference Fee: \$300.00 x 1 session = \$300.00

Total Fees: \$3,450.00

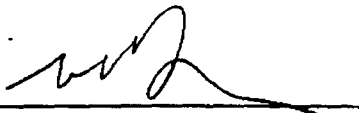
1. Claimant is assessed a \$150.00 non-refundable filing fee.
2. Claimant is further assessed \$1,650.00. Claimant deposited \$ 650.00 and owes a balance of \$1,000.00.
3. Respondents are jointly and severally assessed \$1,650.00 in forum fees.

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

ARBITRATION PANEL

Mark J. Levinson, Esq.	-	Public Chairperson
William P. Hurley	-	Public Panelist
Arthur E. Flint	-	Industry Panelist

Concurring Arbitrator's Signature



Mark J. Levinson, Esq.

Date of Decision: July 5, 1994

Hearing Session Fees: \$500.00 x 6 sessions = \$3,000.00

Pre-Hearing Conference Fee: \$300.00 x 1 session = \$300.00

Total Fees: \$3,450.00

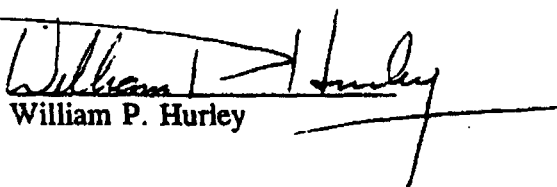
1. Claimant is assessed a \$150.00 non-refundable filing fee. (WPH)
\$650.00
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Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Mark J. Levinson, Esq.	-	Public Chairperson
William P. Hurley	-	Public Panelist
Arthur E. Flint	-	Industry Panelist

Concurring Arbitrator's Signature


William P. Hurley

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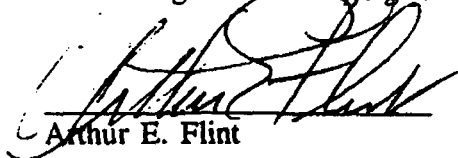
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Concurring Arbitrator's Signature


Arthur E. Flint

Date of Decision: July 5, 1994