

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert A. and Ruth A. Wallace

No. 92-03084

Name of Respondents

Kidder, Peabody & Co., Incorporated
Richard J. Kirsch

REPRESENTATION OF PARTIES

For Claimants: Mark E. Maddox, Esq., of Coons, Maddox & Koeller, Indianapolis, Indiana.

For Respondents: Richard Kelly, Esq., of Kidder, Peabody & Co., Incorporated, New York, New York.

CASE INFORMATION

Statement of Claim filed: September 14, 1992.

Claimants' Submission Agreement signed on: September 4, 1992.

Joint Statement of Answer filed by Respondents, Kidder, Peabody & Co., Incorporated and Richard J. Kirsch on: November 25, 1992.

Respondent Kidder, Peabody & Co., Incorporated Submission Agreement signed on: November 20, 1992.

Respondent Richard J. Kirsch's Submission Agreement signed on: December 10, 1992.

Amended Claim filed: February 2, 1993.

HEARING INFORMATION

Hearing dates: March 30, 1993. Two (2) sessions.
March 31, 1993. Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants, Robert A. Wallace and Ruth A. Wallace ("Claimants") stated that Respondent Richard J. Kirsch ("Kirsch"), while he was employed at Respondent Kidder, Peabody & Co., Incorporated ("KPC") sold the Claimants Capital Realty Investors Tax Exempt Fund/Limited Partnership 1 & 2 ("CRITEF 1 & 2"). Claimants asserted that they had requested a "zero risk vehicle" for investment of their retirement funds. Claimants alleged that Kirsch did not tell them of the inherent risks involved in CRITEF 1 & 2. Claimants also alleged that they had not received the prospectuses prior to purchase, and also alleged that they had not received any annual reports from CRITEF 1 because the report had been sent to KPC. Claimant further alleged that KPC had not forwarded the reports to them. Claimants also alleged misrepresentations and omissions, misdirection of funds, negligent supervision, breach of fiduciary duty, breach of contract, common law fraud and conversion, unsuitability, intentional infliction of emotional distress, negligence, gross negligence, failure to reasonably supervise, failure to use due diligence, violations of State Securities Laws, and RICO violations. Lastly, Claimants alleged that the confirmation report of CRITEF 2 had been altered to highlight "prospectus enclosed", and alleged that there had not been a prospectus as indicated.

In their Answer, Respondents KPC and Kirsch denied each and every allegation of wrongdoing in the Statement of Claim. In addition, KPC and Kirsch asserted the following defenses: Mrs. Wallace purchased CRITEF 1 & 2 for her own account; the Claimants' investment objective had not been "zero risk"; the investment in CRITEF was suitable for Mrs. Wallace; the Claimants have suffered no losses in CRITEF 1 & 2; and the Claimants are not entitled to treble and punitive damages or additional fees.

RELIEF REQUESTED

Claimants requested:

1. Actual damages or rescission (\$176,000.00); plus,
2. Lost interest of 10 percent per year, compounded annually less the amount of distributions paid by the limited partnerships as provided in the Illinois Securities Law of 1953, Section 13A(1);
3. Punitive damages; plus,
4. Attorneys' fees and costs of arbitration (including expert witness, expenses and accounting fees) as provided in the Illinois Securities Law of 1953, Section 13A;

5. Pre- and post-award interest at statutory rates; and
6. Treble damages as provided under applicable RICO laws.

Respondents KPC and Kirsch requested that the Statement of Claim be dismissed in its entirety and the fees associated with the claim be assessed against the Claimants.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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. Claimants, Robert A. Wallace's and Ruth A. Wallace's claims are hereby denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs of this arbitration, including attorneys' fees, except as set forth more fully below.

FORUM FEES

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

4 hearing sessions X \$1,000.00 = \$4,000.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$250.00, and shall retain the hearing session deposit in the amount of \$1,300.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$2,700.00 are assessed against Respondent Kidder, Peabody & Co., Incorporated.

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

CONCURRING ARBITRATORS

Dated:

May 5, 1993

/s/Jerome M. Katz
Jerome M. Katz
Presiding Chair
Public Arbitrator

May 4, 1993

/s/Bonnie L. Macfarlane
Bonnie L. Macfarlane
Public Arbitrator

May 4, 1993

/s/Gordon A. Neal
Gordon A. Neal
Industry Arbitrator

Date of Service by the NASD:

5/5/93