

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

American Board of Examiners in Clinical
Social Work

92-03531

Name of Respondent

Kidder, Peabody & Co., Incorporated

REPRESENTATION

For Claimant American Board of Examiners in Clinical Social Work ("Claimant"): Samuel M. Forstein, Esq. of the law firm of Covington & Burling.

For Respondent Kidder, Peabody & Co., Inc.: Thomas A. Dubbs, Vice President, Associate General Counsel Of Kidder, Peabody & Co., Inc.

CASE INFORMATION

Statement of Claim filed: October 16, 1992

Claimant's Submission Agreement signed on: October 9, 1992

Statement of Answer filed by Respondent on: December 23, 1992

Respondent's Submission Agreement signed on: December 22, 1992

HEARING INFORMATION

Hearing Dates/Sessions: October 5, 1993 - 2 sessions

October 6, 1993 - 2 sessions

November 30, 1993 - 1 session

Hearing Location: Washington, D.C.

CASE SUMMARY

Claimant alleged that Respondent allowed an unauthorized wire transfer of \$175,000 requested by Gerald E. Ezeuko ("Ezeuko") who was employed by Claimant at the time of the transfer. The wire transfer was requested and carried out by Respondent to a bank account outside the control of Claimant. Claimant alleged that this money was converted. Claimant alleged that Respondent committed breach of contract, bad faith, negligence and conversion. Claimant further alleged that Respondent failed to properly supervise its account.

Respondent categorically denied all allegations of wrongdoing alleged by Claimant. Respondent maintained that Ezeuko was vested with either actual or apparent authority to authorize the foregoing wire transfer. Respondent maintained that it was Claimant's responsibility to supervise its employee.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$175,000, plus pre- and post-judgment interest, all of Claimant's costs, expenses and disbursements resulting from Respondent's improper conduct, including reasonable attorneys' fees in pursuing this arbitration proceeding and a pending related action. Claimant also requested exemplary damages and all costs associated with this action.

Respondent requested that the Statement of Claim be dismissed with prejudice with forum fees and related costs to be assessed against Claimant.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing briefs, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent is liable to Claimant and shall pay to Claimant the sum of ONE HUNDRED EIGHTY-EIGHT THOUSAND FIVE HUNDRED 00/100 DOLLARS (\$188,500.00); this amount is inclusive of interest.

2. That Claimant is to assign to Respondent all of Claimant's rights of recovery on the principal amount of \$175,000 plus any associated interest thereon.
3. That all other claims for damages are denied in their entirety.
4. That the parties shall bear their respective costs including attorney's fees except for those specifically stated herein.


FORUM FEES

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

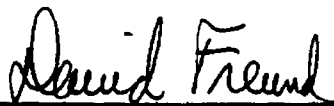
5 sessions X \$1000 = \$5,000

The Panel has decided that Respondent shall bear the hearing sessions fees incurred in this matter and Respondent shall pay to the NASD the sum of \$4,000. Respondent is directed to refund directly to Claimant its originally filed hearing session fee of \$1,000.


Concurring Arbitrators' Signatures

Names


Marvin Elster, Esq.



David Freund



Jeffrey S. Battles

PUBLIC

Public

INDUSTRY
ARBITRATOR

NASD Date of Decision: November 30, 1993

Award

On Thursday, February 1, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on October 17, 1988, by Respondent Everett on May 25, 1989 and by Respondent Quick & Reilly, Inc. on May 10, 1989. The hearing was held in Washington, DC. The arbitrators, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. That Respondents Susan Everett and Quick & Reilly, Inc. are jointly and severally liable and shall pay to the Claimants the sum of Fifteen Thousand Dollars and No Cents (\$15,000.00); no interest is awarded on this amount.
2. The parties shall each bear their respective costs including attorney fees.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimant as their cost of the double session arbitration held February 1, 1990.
4. Respondents are jointly and severally assessed forum fees in the amount of \$750.00 as their assessment of the double hearing. Forum fees are payable to the NASD, Inc. through its staff counsel in accordance with Section 43 of the Code of Arbitration Procedure.

CONCURRING ARBITRATORS

/s/ _____
Paul A. Yates

/s/ _____
Stephen E. Crable

/s/ _____
Jeffrey S. Battles