

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Marion Roen

NASD Arbitration
No: 92-03646

Name of Respondents

Kidder, Peabody & Co. Inc.
Elton Bell

REPRESENTATION

For Claimant: Robert E. Dunne, Esq. - Morgan, Ruby, Schofield, Frnich & Fredkin - San Jose, California

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

CASE INFORMATION

Statement of Claim filed: October 28, 1992

Claimant's Submission Agreement signed: January 11, 1992

Joint Statement of Answer filed by Respondents: March 18, 1993

Submission Agreement - Kidder, Peabody & Co., Inc. - March 18, 1993

Submission Agreement - Elton Bell - March 23, 1993

HEARING INFORMATION

Hearing Dates / Sessions: June 7, 1994 - Two Sessions

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant, Marion Roen (Roen), alleged that Respondents, Kidder, Peabody & Co., Inc. (Kidder), and Elton Bell (Bell), convinced Roen to invest \$70,000.00 in one unsuitable investment, that being Commonwealth Mortgage of America Limited Partnership. Roen claimed that the purchase was unsuitable and did not adequately diversify her investments.

Roen contended that Kidder and Bell are liable for her investment and claimed damages of \$70,000.00 plus interest from the date of the investment. Roen contended that the Respondents were negligent, that they breached their fiduciary duty, that they were guilty of fraud, that they were guilty of negligent misrepresentation, that they converted her assets and sought the imposition of a constructive trust and requested an accounting.

Respondents alleged that Roen waited an impermissibly long time before taking any action with respect to her investments and that the claim is therefore time-barred.

Respondents also alleged that the investment was made based on a thorough and accurate disclosure and was suitable for her and that, in 1988, she was advised to sell but declined to do so.

RELIEF REQUESTED

Claimant seeks damages according to proof, punitive damages, compensatory and general damages interest at the legal rate, an accounting of all funds invested and commissions earned, attorneys' fees and costs.

Respondents seek dismissal of the claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents have asked the panel to dismiss the claim because the date the claimant filed her complaint in Superior Court (April, 1992) exceeded any applicable Statute of Limitations. The panel concluded that the time claimant knew or should have known of Respondents' breach of fiduciary duty was in May of 1989. Therefore, the Motion to Dismiss is denied.

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 original remains 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. Respondents, Kidder, Peabody & Co., Inc. and Elton Bell, are jointly and severally liable and shall pay to Claimant, Marion Roen, the sum of Seventy Thousand Dollars and No Cents (\$70,000.00), plus simple interest thereon from the date of purchase through June 7, 1994. The rate of interest is to be computed at the annual Treasury Bill rate for 1986 and each subsequent year through June of 1994.
2. Said sum shall be reduced by
 - (1) \$15,435.00, representing the sum of dividends received and,
 - (2) \$4,816.00, representing failure to mitigate damages, (failure to sell the investment at issue as of May, 1989.
3. Claimant's claim for punitive damages is denied.
4. The parties shall each bear their respective costs and fees, including attorneys' fees.

FORUM FEES

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

Total fees:		
Two sessions @ \$500 / session	-	\$1,000.00
Respondents' Share (joint & several)	-	\$1,000.00

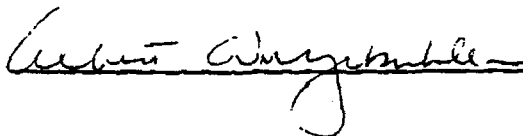
The NASD shall refund to Claimant the previously paid hearing session deposit of \$500.00.

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Joanna Leighton	Public Chairperson
Robert Recker	Industry Panelist
Albert Wulfekuhler	Public Panelist

Concurring Arbitrators' Signatures



Date Served: 08/23/94