

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Renee des Tombes

NASD Arbitration
No. 92-04085

Name of Respondent(s)

Kidder, Peabody & Co., Inc.
Robert B. Dini

REPRESENTATION

For Claimant: S. Gary Varga, Esq., Carmel, California and William M. Ziering, Esq., San Francisco, California

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

CASE INFORMATION

Statement of Claim filed: December 3, 1992

Claimant's Submission Agreement signed: November 17, 1992

Joint Statement of Answer filed by Respondents: February 3, 1993

Respondent's Submission Agreements signed as follows:
February 1, 1993

Kidder, Peabody & Co., Inc.: February 1, 1993

Robert B. Dini: February 26, 1993

HEARING INFORMATION

Pre-Hearing Conference Date/Session: None

Hearing Dates/Sessions: September 30, 1993 (two sessions)
October 1, 1993 (two sessions)

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant alleged violation of Section 10(b) of the Exchange Act and Rule 10b-5, breach of fiduciary duty, professional and general

negligence, unsuitability, churning and failure to supervise with respect to various securities transactions in Claimant's account.

Respondents denied Claimant's allegations and alleged that Claimant is a mature, educated and intelligent investor with some experience in the world of investments and finance. Respondents further alleged that Claimant understood and approved the transactions that took place in her account.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in excess of \$70,000.00;
2. Disgorgement and return of all commissions;
3. Punitive damages of not less than \$100,000.00;
4. Full costs and attorneys' fees as provided by state and federal law;
5. Pre-award interest; and
6. Such other and further relief that the arbitration panel deems just and equitable.

Respondents requested dismissal of Claimant's claims.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 National Association of Securities Dealers, Inc. (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 Robert B. Dini are jointly and severally liable for and shall pay to Claimant the sum of \$106,650.00 in compensatory damages, apportioned as follows:

- a. \$75,000.00 representing trading losses;
- b. \$30,000.00 representing the return of commissions from unauthorized trades; and
- c. \$1,650.00 in margin interest.

2. Respondent Kidder, Peabody & Co., Inc. is solely liable for and shall pay to Claimant the sum of \$90,000.00 in punitive damages

pursuant to J. Alexander Securities v. Signe Mendez, 93 D.A.R. 10263, Second Appellate District, California Court of Appeals, filed August 9, 1993.

3. Respondent Robert B. Dini is solely liable for and shall pay to Claimant the sum of \$10,000.00 in punitive damages pursuant to J. Alexander Securities v. Signe Mendez, 93 D.A.R. 10263, Second Appellate District, California Court of Appeals, filed August 9, 1993.

The award of compensatory and punitive damages set forth in paragraphs one, two and three is final and payment is required in accordance with section 41(h) of the NASD Code of Arbitration Procedure.

4. Respondent Kidder, Peabody & Co., Inc. and Robert B. Dini are jointly and severally liable for and shall pay to Claimant reasonable and customary attorneys fees, including expenses such as travel and expert witness testimony, pursuant to California Civil Code Section 3333, Walah v. Hooker & Fay 212 Cal.App.2d 450, 28 Cal.Rptr. 16 (1963) and Neuberger & Berman v. Donald, Lufkin & Jenrette Securities Corp. No. 16833/91 (Sup. Ct. N.Y. 4/6/92).

Claimant's attorneys shall submit an affidavit and itemize the time, hourly rate and costs within two weeks from the date this Award is mailed to the parties' representatives. Counsel for Respondents has two weeks following his receipt of the affidavit to object to any portion of said affidavit and its contents. The arbitrators will issue a decision regarding attorney's fees after Respondents submit their position.

5. All other claims for interest by Claimant are denied.

6. The parties shall each bear their respective costs of this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$750.00 hearing session deposit previously deposited by the Claimant. Forum fees are assessed against:

Respondent Kidder, Peabody & Co., Inc. in the amount of \$3,000.00, calculated as follows: Four hearing sessions times \$750.00/session.

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Kimberlie L. Cerrone, Esq.	Public Arbitrator
Theodore F. Schmidt	Public Arbitrator
Paula C. Miterko	Industry Arbitrator

Concurring Arbitrators' Signatures

DATE SERVED: 11/19/93

Kimberlie L. Cerrone, Esq.

Theodore F. Schmidt

Paula C. Miterko
Paula C. Miterko

Date of Decision: 11/17/93

34