

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Philip J. Drieci and  
Elizabeth R. Drieci, Trustees  
UTD 4/4/86 by Philip and  
Elizabeth Drieci

NASD Arbitration  
No. 93-00564

Name of Respondent(s)

Kidder, Peabody & Co., Incorporated

REPRESENTATION

For Claimants: Steven A. Micheli, Esq., Ault, Deuprey, Jones and  
Gorman, San Diego, California

For Respondent: William H. Phelps, Esq., Kidder, Peabody & Co.,  
Incorporated, Los Angeles, California

CASE INFORMATION

Statement of Claim filed: February 12, 1993

Claimants' Submission Agreement signed: March 4, 1993

Statement of Answer filed by Respondent: May 10, 1993

Respondent's Submission Agreement signed: May 7, 1993

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):  
November 2, 1993 (one session)

Hearing Date(s)/Session(s): December 1, 1993 (two sessions)

Hearing Location: San Diego, California

CASE SUMMARY

Claimants alleged negligence, breach of fiduciary duty,  
violation of State and Federal Securities Laws, intentional and

negligent misrepresentation and intentional concealment with respect to Claimants' investment in Chula Vista bonds.

Respondent denied any liability to Claimants and alleged that it has met or exceeded all of its duties and responsibilities to Claimants with respect to their investment.

#### RELIEF REQUESTED

Claimants requested damages in an amount equal to the difference between the \$101,428.37 paid on February 2, 1989 plus seven percent (7%) interest up to the present date, minus the amount received from the bond trustee. Claimants also requested punitive damages, statutory penalties, costs and attorney's fees.

Respondent requested dismissal of Claimants' 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. Respondent Kidder, Peabody & Co. Incorporated is liable for and shall pay to Claimants the sum of \$42,538.39. Any additional funds paid to Claimants as a bondholder pursuant to ongoing bankruptcy proceedings are to be transferred to the Respondent.

2. Claimants' claim for punitive damages is denied.

3. The parties shall each bear their respective costs including attorney's fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$500.00 hearing session deposit previously deposited by the Claimants. Forum fees are assessed against:

Respondent Kidder, Peabody & Co., Incorporated in the amount of ~~\$~~\$1,300.00, calculated as follows: One pre-hearing session times \$300.00/session plus two hearing sessions times \$500.00/session.

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

ARBITRATORS

<u>Name</u> . . . . .	<u>Public / Industry</u>
William R. Newsome, Esq.	Public Arbitrator
Edward W. Burnett	Public Arbitrator
Alfred E. Monahan	Industry Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
William R. Newsome, Esq.

Edward W. Burnett

Edward W. Burnett

\_\_\_\_\_  
Alfred E. Monahan

Date of Decision: \_\_\_\_\_

Served 1/3/94