

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Daryl Kraine

vs.

Case #
93-02084

Name of Respondents

Kidder, Peabody & Co., Incorporated
James P. Dolan, Jr.

REPRESENTATION

For Claimant: Warren M. Schur, Esq. of Heller, Borreliz & Katz, P.C.

For Respondents: Brian McDonough, Esq. of Shanley & Fisher.

CASE INFORMATION

Statement of Claim filed: May 20, 1993.

Claimant's Submission Agreement signed on: May 21, 1993.

Statement of Answer filed by Respondents, Kidder, Peabody & Co. Incorporated and James P. Dolan, Jr., on August 5, 1993.

Respondent, Kidder, Peabody & Co. Incorporated's, Submission Agreement signed on: August 5, 1993.

Respondent, James P. Dolan, Jr.'s, Submission Agreement signed on: Sept. 15, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: January 18, 1994 / Two Sessions
 January 19, 1994 / Two Sessions

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimant alleges that between 1987 and 1989 Respondent Dolan, a broker at Respondent Kidder, Peabody induced Claimant to invest \$40,000 (about 40% of Claimant's total assets) in limited partnerships even though he knew that these investments were unsuitable for Claimant. Claimant alleges that he is an unsophisticated investor with no financial background and very limited assets. Claimant also alleges that in 1991, Mr. Schur, his attorney, called Mr. Dolan and instructed his office to sell the limited partnership investments as soon as possible and without loss to Claimant. Claimant also instructed Respondent Dolan to sell his limited partnership interests via letters dated June 6, 1991 and January 17, 1992, but Respondent Dolan did not sell them, because there was no "opportunity to sell your units". Claimant alleges that he proposed that Respondent Kidder, Peabody to buy back his limited partnership interests at the original purchase price, to no avail. Claimant further alleges that he has suffered great emotional and financial hardship due to the uncertain status of the limited partnerships, and implicates Respondent Kidder, Peabody for its failure to supervise Respondent Dolan.

Respondent maintain that upon opening his account, Claimant emphasized to Respondent Dolan that his primary objective was to maximize investment income. Respondent Dolan then placed about \$60,000 of Claimant's money into liquid mutual funds. Only several years later did Respondent Dolan recommended that Claimant invest in limited partnerships, which did not occur until Claimant asked numerous questions and all the risks were disclosed. Respondent also maintains that Claimant has to date received dividends on the limited partnerships totalling \$18,400, which is a return of 46% on his investment. Respondent also maintain that Claimant never complained that the investments were unsuitable for him as he received the dividends; and that it was only since the limited partnerships began to experience difficulty due to economic conditions that Claimant claimed that the investments were unsuitable. Thus, Respondent argues, the Claimant's claims are barred by the doctrines of ratification, waiver and estoppel.

RELIEF REQUESTED

Claimant requests:

- (1) Rescission of his investment in the six limited partnerships sold to him by Mr. Dolan.
- (2) Compensatory damages of \$37,700.
- (3) Punitive damages of \$75,400.
- (4) Attorney's fees
- (5) Costs

Respondents request a dismissal of the claim in its entirety.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator(s) have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondent Kidder, Peabody & Co. Incorporated is liable and shall pay to the Claimant the sum of **FIFTY THOUSAND DOLLARS AND ZERO CENTS** (\$50,000.00). No interest is awarded.
2. All claims against Respondent James P. Dolan, Jr. are dismissed in all respects.
3. Claimant is to return the following Limited Partnership Certificates to Respondent Kidder, Peabody based upon the fact that these investments were unsuitable for Claimant:
 - Polaris Aircraft Income Fund III purchased June, 1987.
 - Polaris Aircraft Income Fund III purchased July, 1987.
 - Capital Realty Investors Tax Exempt Fund.
 - Capital Realty Investors Tax Exempt Fund III.
 - Polaris Aircraft Income Fund V.
 - American Income Partners V-A.
 - American Income Partners V-B.
4. Claimant and Respondent Kidder, Peabody will simultaneously exchange the limited partnership certificates for the amount awarded.
5. The claim for punitive damages is denied.
6. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Non-refundable Filing Fee - \$200.00.
Hearing Sessions Fees - 4 sessions x \$750.00 = \$3,000.00.
Total Due - \$3,200.00.

The Respondent Kidder, Peabody & Co. Incorporated is assessed and shall pay to the NASD the sum of \$1,500.00 representing one/half of the total forum fees assessed in this proceeding.

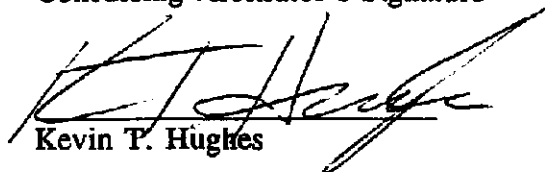
The Claimant is assessed and shall pay to the NASD \$1,700.00. Claimant previously paid \$950.00 and owes a balance of \$750.00.

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

ARBITRATION PANEL

Kevin T. Hughes	-	Public Chairperson
Fred Shinagel	-	Industry Panelist
Barbara Kornreich	-	Public Panelist

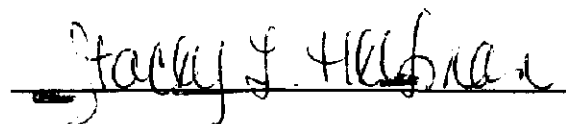
Concurring Arbitrator's Signature


Kevin T. Hughes

Date of Decision: March 2, 1994

STATE OF NEW YORK s.s.:
COUNTY OF NASSAU

On this 28th day of February, 1994, before me personally appeared Kevin T. Hughes known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



STACEY L. HELFMAN
NOTARY PUBLIC, State of New York
No. 4938518, Suffolk County
Term Expires July 25, 1994

The Claimant is assessed and shall pay to the NASD \$1,700.00. Claimant previously paid \$950.00 and owes a balance of \$750.00.

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

ARBITRATION PANEL

Kevin T. Hughes	-	Public Chairperson
Fred Shinagel	-	Industry Panelist
Barbara Kornreich	-	Public Panelist

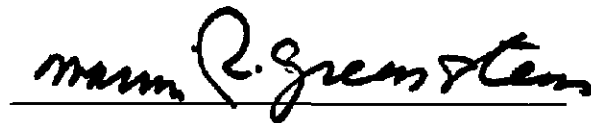
Concurring Arbitrator's Signature


Barbara Kornreich

Date of Decision: March 2, 1994

STATE OF *ny* S.S.:
COUNTY OF *mf*

On this day of February, 1994, before me personally appeared Barbara Kornreich known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



MARION R. GREENSTEIN
NOTARY PUBLIC, State of New York
No. 03-1582870
Qualified in Bronx County
Commission Expires Nov. 30, 1995

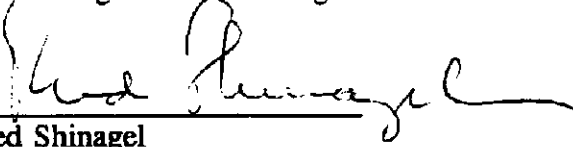
The Claimant is assessed and shall pay to the NASD \$1,700.00. Claimant previously paid \$950.00 and owes a balance of \$750.00.

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

ARBITRATION PANEL

Kevin T. Hughes	-	Public Chairperson
Fred Shinagel	-	Industry Panelist
Barbara Kornreich	-	Public Panelist

Concurring Arbitrator's Signature


Fred Shinagel

Date of Decision: March 2, 1994

STATE OF
COUNTY OF

s.s.:

On this day of February, 1994, before me personally appeared Fred Shinagel known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.
