

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
AWARD**

In the Matter of the Arbitration Between

DAVID L. CIAPPONI,

Claimant,

v.

NASD No. 93-3071

KIDDER PEABODY & CO. and
GEORGE BITTING.

Respondents.

Representation

For Claimant: David Studley, Esq. of San Francisco, CA

For Respondent: William Phelps, Esq. of Kidder Peabody & Co., Los Angeles, CA

Case Information

Statement of Claim filed: October 27, 1993

Claimant's Submission Agreement signed: July 30, 1993

Statement of Answer filed on: November 24, 1993

Respondents' Submission Agreement signed on: Respondents did not file submission agreements but filed an Answer, appeared at the arbitration and submitted to the jurisdiction of the National Association of Securities Dealers, Inc. (hereinafter, NASD).

Hearing Information

Prehearing Conference Date(s)/Sessions: None

Hearing Date/Sessions: July 21, 1994/two

Hearing Location: San Francisco, CA

Case Summary

Claimant alleged:

Failure to execute purchase order of 250 shares of Oxford Health common stock. Claimant placed the order on February 19, 1993 on margin, which was confirmed verbally by respondent George Bitting (hereinafter, Bitting) at \$35, plus 5/8 commission. Claimant and Bitting talked several more times about his account and the Oxford Health purchase. Claimant subsequently discovered there was no record of his purchase.

Respondents denied all allegations of the Statement of Claim and alleged:

Claimant is a licensed registered representative actively employed by an NASD member firm. He gave Bitting a "day order" on February 23, 1993 to purchase the shares in question and was told about a "fill" on his order, but the order was never executed. Claimant never received a confirmation of trade regarding the transaction or a monthly statement reflecting the trade in any way.

Mr. Ciapponi made no mention of Oxford Health until April 1993, at which time Bitting informed him he did not own the stock. There were additional conversations regarding the matter the following day when the stock was trading between \$35.25 and \$39.25 per share and claimant in no way attempted to rectify any dispute by placing an order. Claimant knows that a confirmation is generated after every executed transaction and all transactions are reflected on monthly statements. neither of which occurred.

Relief Requested

Claimant requested:

1. That the 250 shares of Oxford Health stock be placed in his account as confirmed to him on February 19, 1993 at \$35 per share, for a cost of \$8,750;
2. Costs related to arbitration;
3. Punitive damages of \$10,000.

Other Issues Considered and Decided

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 originals remain 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. All claims are dismissed;
2. The claim for punitive damages is dismissed;
3. The parties shall each bear their respective attorney's fees;
4. The parties shall each bear their respective costs.

Other Costs

None.

Forum Fees

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall retain the \$400 hearing session deposit previously paid by the claimant. Forum fees are assessed against:

Respondent Kidder Peabody, Inc., for \$400.

calculated as follows: two hearing sessions at \$400/hearing session, equals \$800, with \$400 already paid by the claimant as a hearing deposit.

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

Arbitration Panel

Name

Public/Industry

John B. Reilly
Walter R. Tick
Bertram L. Sugarman

Public
Public
Industry

Concurring Arbitrators' Signatures



John B. Reilly

Walter R. Tick

Bertram L. Sugarman

Date of Decision: