

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

W. Eugene Brain, DDS, P.S., Profit Sharing and Retirement Plan,
W. Eugene Brain, Trustee

NASD Arbitration
No.93-04913

Name of Respondents

Kidder, Peabody & Co., Inc.
Newell C. Bossart

REPRESENTATION

For Claimant: Jack G. Orr, Esq., Harris, Orr & Wakayama, Seattle, Washington

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

CASE INFORMATION

Statement of Claim filed: November 30, 1993

Claimant's Submission Agreement signed: October 25, 1993

Joint Statement of Answer filed by Respondents: March 21, 1994

Respondents' Submission Agreements signed:

Kidder, Peabody: March 15, 1994

Newell Bossart: March 21, 1994

HEARING INFORMATION

The hearing was held on August 2, 1995, in Seattle, Washington, and lasted two sessions.

CASE SUMMARY

Claimant alleged unauthorized trading in bonds and common stocks, and failure to execute Claimant's written instructions to liquidate the holdings and close the account. Claimant alleged these actions violated state and federal securities laws and NASD rules and regulations. Claimant further alleged negligence, breach of fiduciary duty, negligent misrepresentation, and breach of contract with respect to Respondents' actions.

Respondents denied the allegations of the claim, and asserted that all claims were barred by applicable statutes of limitations. Respondents further asserted that, contrary to the allegations of the Claim, all investments were discussed with and approved by Claimant's trustee in advance. Respondents specifically denied that Claimant's Trustee ever ordered the liquidation of securities. Respondents denied liability for any losses in the account, stating that any losses were the result of market conditions and the Trustee's own actions.

RELIEF REQUESTED

Claimant requested damages of approximately \$258,000 including actual account losses, interest, lost opportunity costs and commissions, costs of arbitration and attorney's fees.

Respondents requested dismissal of all 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 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 asserted by Claimant are dismissed in their entirety.
2. The parties shall bear their respective costs of arbitration, including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$200

non-refundable filing fee paid by Claimant. In addition, Claimant is assessed all forum fees, as follows:

2 sessions @ \$750 / session	=	\$1,500.00
<u>Credit for deposit</u>	=	<u>\$750.00</u>
Balance due	=	<u>\$750.00</u>

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Herbert H. Freise	Public Chairperson
Joseph L. Crowe, Jr.	Public Panelist
Frank A. Pritchard, Jr.	Industry Panelist

Concurring Arbitrators' Signatures

Herbert H. Freise

Served 8/22/95

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