

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Clarence J. & Anne C. Venne
Clarence J. Venne Children's Trust
Richard A. & Johnette Venne
Johnette Venne c/f Richard Venne, Jr.
Johnette Venne c/f John Venne
Johnette Venne c/f Jillian Venne
Clarence J. Venne Profit Sharing Trust
Clifford Trust, Richard A. & Anne C. Venne,
Custodians f/b/o John Venne
Clifford Trust, Richard A. & Anne C. Venne,
Custodians f/b/o Richard Venne, Jr.
Clifford Trust, Richard A. & Anne C. Venne,
Custodians f/b/o Jillian Venne

93-05341

Name of Respondents

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

REPRESENTATION

For Claimants Clarence J. Venne, Anne C. Venne, Richard A. Venne and Johnette Venne, individually, jointly and as custodians and trustees (collectively "Claimants"): Kevin P. Conway, Esq. of Conway & Conway, New York, NY.

For Respondents Kidder, Peabody & Co. ("Kidder") and James P. Dolan, Jr. ("Dolan"): Brian F. McDonough, Esq. of Shanley & Fisher, New York, NY.

CASE INFORMATION

Statement of Claim filed: December 23, 1993

Claimant Clarence J. Venne's Submission Agreement signed on December 21, 1993

Claimant Anne C. Venne's Submission Agreement signed on December 21, 1993

Claimant Richard A. Venne's Submission Agreement signed on December 21, 1993

Claimant Johnette Venne's Submission Agreement signed on December 21, 1993

The Submission Agreement for Claimant Clarence J. Venne Children's Trust was executed by Ronald Bluestein, Trustee, on: February 28, 1994

The Submission Agreement for Claimant Clarence J. Venne Children's Trust was executed by Richard A. Venne, Trustee, on: March 2, 1994
Claimant Johnette Venne c/f Richard Venne, Jr.'s Submission Agreement signed on: March 2, 1994

Claimant Johnette Venne c/f John Venne's Submission Agreement signed on: March 2, 1994

Claimant Johnette Venne c/f Jillian Venne's Submission Agreement signed on: March 2, 1994

The Submission Agreement for Claimant Clarence J. Venne, Inc. Profit Sharing Trust was executed by Richard A. Venne, Trustee, on: March 30, 1994

The Submission Agreement for Claimant Clifford Trust f/b/o John Venne was executed by Richard A. & Anne C. Venne, Trustees, on: March 29, 1994

The Submission Agreement for Claimant Clifford Trust f/b/o Richard Venne Jr. was executed by Richard A. & Anne C. Venne, Trustees, on: March 29, 1994

The Submission Agreement for Claimant Clifford Trust f/b/o Jillian Venne was executed by Richard A. & Anne C. Venne, Trustees, on: March 29, 1994

Joint Statement of Answer filed by Respondents, Kidder, Peabody & Co. and James P. Dolan, Jr. ("Respondents") on: May 4, 1994

Kidder's Submission Agreement signed on: May 17, 1994

Dolan did not execute a Submission Agreement

HEARING INFORMATION

Pre-Hearing Conferences: May 10, 1995/one session; September 14, 1995/one session

Hearing Dates/Sessions: September 19, 1995/two sessions; September 20, 1995/two sessions; October 10, 1995/two sessions; October 11, 1995/two sessions; October 30, 1995/two sessions; October 31, 1995/two sessions

Hearing Location: National Association of Securities Dealers, Inc. ("NASD") District Office, Philadelphia, PA

CASE SUMMARY

Claimants—alleged, among other things, that they were unsophisticated investors whose investment objective was preservation of capital and long-term growth in non-speculative, low risk products. Claimants alleged that Dolan induced Claimants to purchase investments which were unsuitable in light of their stated investment objectives. Claimants alleged that Dolan neither disclosed the risks associated with the limited partnerships he persuaded Claimants to purchase, nor did he disclose the commissions Respondents would receive. Claimants alleged that Dolan systematically persuaded Claimants to authorize the purchase

of additional unsuitable limited partnerships through a continuing series of misrepresentations and omissions constituting fraud. Claimants alleged that monthly statements for Claimants' accounts were manipulated to conceal the decreasing value of the limited partnerships as well as reduced dividend payments. Claimants alleged that Dolan breached his fiduciary duty to Claimants by handling Claimants' accounts in a negligent manner. Claimants alleged that Dolan engaged in excessive trading for the purpose of generating commissions for Dolan and profits for Kidder. Claimants alleged that Dolan was employed by Kidder during the conduct at issue in this case. Claimants alleged that Respondents violated, among others, Rules 342(b) and 405 of the New York Stock Exchange and Section 27, Article 3 of the NASD Rules of Fair Practice when Kidder failed to exercise adequate supervision and control over Dolan in the management of Claimants' accounts. Claimants alleged that Kidder's actions breached their contractual responsibility to Claimants. Claimants also alleged that Respondents engaged in a pattern of criminal activity in violation of 18 U.S.C. Sections 1341 and 1343, as well as Florida Statutes Chapters 517.301, 517.211 and 772.103. Claimants further alleged that as a result of Respondents' conduct, Claimants have been damaged.

Respondents categorically denied all allegations of wrongdoing. Respondents maintained that Claimants, specifically Clarence J. Venne and Richard A. Venne, are sophisticated and experienced investors. Respondents maintained that Respondents provided detailed prospectuses on investments to Claimants. Respondents maintained that Dolan explained each and every investment to Claimants prior to Claimants' purchases. Respondents maintained that duplicate copies of monthly statements and confirmation slips were sent to Claimants' financial advisor. Respondents maintained that Dolan responded to all questions from Claimants' financial advisor. Respondents maintained that the investments at issue in this arbitration accounted for approximately ten percent (10%) of a series of transactions in Claimants' accounts totalling roughly twelve million dollars (\$12,000,000). Respondents maintained that Dolan understood Claimants' investment objectives to be income production. Respondents maintained that at the time these investments were recommended, they met Claimants' investment objectives. Respondents maintained that all transactions were authorized by Claimants and were suitable for Claimants. Respondents further maintained that any loss suffered by Claimants were the result of Claimants' own actions and/or to unforeseeable market conditions.

RELIEF REQUESTED

Claimants requested, in their Statement of Claim, compensatory damages in excess of one million five hundred thousand dollars, pre and post judgment interest, treble damages, all costs and expenses of this action including reasonable attorneys' fees and punitive damages.

Respondents request that the Statement of Claim be denied in its entirety and that each party bear its own expenses including attorneys' fees.

OTHER ISSUES CONSIDERED & 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.

That pursuant to the by-laws of the NASD and Section 12 of the NASD's Code of Arbitration Procedure ("Code"), the Panel determined that Respondent Dolan was required to submit to this arbitration notwithstanding his failure to file an executed Submission Agreement. Therefore, Respondent is bound by the panel's rulings and determinations.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearings, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' Claim is denied in its entirety.
2. Claimants' Claim for punitive damages is denied.
3. Claimants' Claim for treble damages is denied.
4. The parties shall bear their respective costs and attorneys' fees except as specifically addressed herein.
5. Any and all relief not specifically addressed herein is denied in its entirety.

OTHER COSTS

Claimant shall pay \$210.00 administrative fee for the duplication of hearing tapes to the NASD.

FORUM FEES

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

2 Prehearing Sessions x \$300 = \$600

12 sessions X \$1,500 = \$18,000 plus \$600 = \$18,600

Forum fees assessed against Claimants and Respondents in equal amounts. Claimants are jointly and severally assessed forum fees and receive credit for their hearing deposit of \$1,500 leaving a net assessment of \$7,800. Respondents are jointly and severally assessed forum fees in the amount of \$9,300.

Forum fees are payable to the NASD.

DATE:

11/20/95

CONCURRING ARBITRATORS' SIGNATURES:

Allen Kilik

Allen Kilik, Presiding
Public Arbitrator

John Robert Harris
Public Arbitrator

Charles W. Lake
Industry Arbitrator

Date Award Served by NASD:

November 28, 1995

12 sessions X \$1,500 = \$18,000 plus \$600 = \$18,600

Forum fees assessed against Claimants and Respondents in equal amounts. Claimants are jointly and severally assessed forum fees and receive credit for their hearing deposit of \$1,500 leaving a net assessment of \$7,800. Respondents are jointly and severally assessed forum fees in the amount of \$9,300.

Forum fees are payable to the NASD.

DATE:

CONCURRING ARBITRATORS' SIGNATURES:

Allen Kilik, Presiding
Public Arbitrator

11/23/95

John Robert Harris
John Robert Harris
Public Arbitrator

Charles W. Lake
Industry Arbitrator

Date Award Served by NASD: November 28, 1995

12 sessions X \$1,500 = \$18,000 plus \$600 = \$18,600

Forum fees assessed against Claimants and Respondents in equal amounts. Claimants are jointly and severally assessed forum fees and receive credit for their hearing deposit of \$1,500 leaving a net assessment of \$7,800. Respondents are jointly and severally assessed forum fees in the amount of \$9,300.

Forum fees are payable to the NASD.

DATE:

CONCURRING ARBITRATORS' SIGNATURES:

Allen Kilik, Presiding
Public Arbitrator

John Robert Harris
Public Arbitrator

11/21/95

Charles W. Lake
Charles W. Lake
Industry Arbitrator

Date Award Served by NASD: November 28, 1995