

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Carol A. Cummings

vs.

Award No.

94-00342

Name of Respondents

Kidder, Peabody & Co., Incorporated

Robert J. Gulla

Mark McAndrew

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**REPRESENTATION**

For Claimant: Carol A. Cummings, *pro se*.

For Respondents: Richard Kelly, Esq., in-house counsel with Kidder, Peabody & Co., Incorporated, located in New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on January 14, 1994.

Claimant's Submission Agreement was signed on January 13, 1994.

Various Amendments to the Statement of Claim were filed on January 4, 1994, March 28, 1995, March 29, 1995 and others dated May 2, 1994, May 5, 1994 and March 17, 1995.

Claimant's Opposition to the Motion to Dismiss was filed on March 7, 1995.

Joint Statement of Answer and Motion to Dismiss were filed by Respondents on August 15, 1994.

Respondent Robert Gulla's ("Gulla") Submission Agreement was signed on August 11, 1994.

Respondent Mark McAndrew's ("McAndrew") Submission Agreement was signed on August 1, 1994.

Respondent Kidder Peabody, Inc.'s ("Kidder") Submission Agreement was signed on August 12, 1994.

Respondents' Reply to Claimant's Opposition was filed on March 14, 1995.

**HEARING INFORMATION**

Hearing Dates/Sessions:      March 4, 1996 - 2 sessions  
   March 5, 1996 - 2 sessions

Hearing Location:              American Arbitration Association  
   133 Federal Street  
   Boston, MA

### **CASE SUMMARY**

Claimant alleged that McAndrew, in his capacity as account representative for Claimant, made trades that were inappropriate with regard to Claimant's stated level of risk tolerance and Claimant's knowledge of the securities industry. Claimant additionally alleged that McAndrew solicited her to purchase Marble Finance Corporation and fraudulently misrepresented the risky nature of the transaction. Claimant also alleged that Kidder Peabody was a market maker in this security.

Claimant further alleged that Respondent McAndrew opened a margin account and made other arrangements to finance the purchase of the controverted securities knowing and taking advantage of the fact that Claimant lacked understanding in this area. Last, Claimant charged that Respondents Kidder Peabody and Gulla failed to adequately supervise McAndrew. Claimant alleged fraud and breach of fiduciary duty against all respondents.

Respondents claimed that the direction to purchase the controverted securities came unsolicited from Claimant. Respondents also maintained that Claimant's claims are ineligible for arbitration pursuant to Section 15 of the NASD *Code of Arbitration Procedure* ("*Code*").

### **RELIEF REQUESTED**

Claimant requested that she be awarded between \$100,000 and \$500,000.

Respondents requested that the case be dismissed in its entirety.

### **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 while the original remains on file with the NASD.

The Director of Arbitration decided that claims regarding purchases on or after January 14, 1988 were eligible for arbitration pursuant to Section 15 of the *Code*.

Subsequent to the hearing, Claimant submitted several papers to further support her claim, some of which were responded to by Respondents. This Panel declined to consider these post-hearing submissions.

### **AWARD**

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

The claim is denied with respect to all three Respondents. Furthermore, all evidence of the claim against the these Respondents should be expunged from their CRD records. No further fees, surcharges, etc., shall be assessed against any of the parties.

**FORUM FEES**

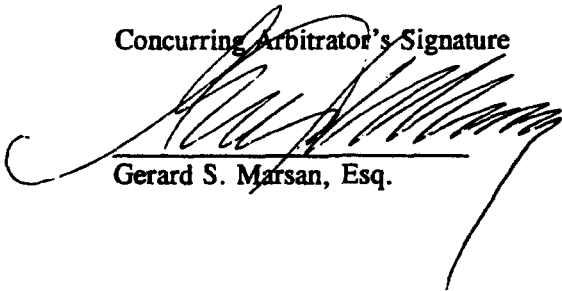
Non-refundable Filing Fee:	\$200.00
Hearing Sessions Fees:	\$3,000.00 (4 hearing sessions @ \$750.00 per session)
Total Fees:	<u>\$3,200.00</u>

As stated previously, no fees shall be assessed against either party.

**ARBITRATION PANEL**

Gerard S. Marsan, Esq.	-	Public Chairperson
William B. Simmons	-	Public Panelist
Christine Armstrong, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature



Gerard S. Marsan, Esq.

NASD's Date of Decision: April 30, 1996

**FORUM FEES**

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Concurring Arbitrator's Signature

  
Christine Armstrong, Esq.

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Concurring Arbitrator's Signature

William B. Simmons

William B. Simmons

4/22/96

NASD's Date of Decision: April 30, 1996