

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
AWARD**

In the Matter of the Arbitration Between

Garth R. Zeigler,

Claimant,

v.

NASD No. 94-840

Kidder Peabody, Inc., Michael O'Connell,
Does 1 through 20, inclusive,

Respondents.

Representation

For Claimant: Joseph Gibb, Esq., Indian Wells, California

For Respondents: William Phelps, Esq. of Kidder Peabody, Los Angeles, California

Case Information

Statement of Claim filed: March 2, 1994

Claimant's Submission Agreement signed: February 15, 1994

Statement of Answer filed on: May 10, 1994

Respondent Kidder Peabody's Submission Agreement signed on: May 10, 1994

Respondent Michael O'Connell's Submission Agreement signed on: May 12, 1994

Hearing Information

Prehearing Conference Date(s)/Sessions: None

Hearing Date/Sessions: May 23/two, 24/three, 1995

Hearing Location: Los Angeles, California

Case Summary

Claimant Garth Zeigler (Zeigler) alleged breach of contract, breach of covenant of good faith, fraud, infliction of emotional distress, interference with prospective economic advantage, violation of California Labor Code Sections 201, 203 and 2802, and wages due and wait time penalties due to the breach of an employment termination agreement. Claimant alleged that he entered into a partly oral, partly written, employment agreement with Respondent Kidder Peabody, Inc. (Kidder) on August 1, 1990. On June 1, 1992, at Kidder's demand, Claimant and Kidder severed their employment relationship and entered into a termination agreement.

Zeigler further alleged that by the terms of that agreement, Kidder agreed to the following: to assist Claimant in defense of an action filed against Claimant by a former customer, not to act arbitrarily in dealing with Claimant, to waive Retirement Account termination fees, to pay Zeigler commissions on certain insurance products, not to solicit Claimant's customers, waive the balance of a promissory note, continue to resolve the action filed against Claimant by a former customer. Said promises were made expressly to Claimant in consideration for Zeigler's having waived and released any and all claims against Kidder. Claimant alleged that from June 1, 1992, Kidder breached said agreement.

Respondents denied each and every allegation and alleged that Zeigler is educated as an attorney and prior to entering the securities industry had held a variety of positions in the fields of business and law. At the time he was employed, Kidder and Zeigler agreed he would be based in a satellite office in Palm Desert, California. After almost two years, Kidder made a business decision to close that office as it was not generating sufficient revenue and Respondent Michael O'Connell (O'Connell) negotiated an amicable agreement with Claimant to close the office.

Respondents also alleged that they have never received any documentation regarding an action by a former customer and are unable to evaluate the merits, if any, of such litigation. Respondents also tried to resolve the customer complaint brought by Edith Ludewig and had reached an agreement which Ms. Ludewig until she subsequently reneged on that agreement. Respondents have turned over copies of all documentation in their control, however. Respondents have dealt with Claimant in good faith, have waived termination fees and all commissions regarding insurance commissions have been paid to him. Respondents alleged they have not solicited business from Zeigler's former customers. Respondents further have made and will make no attempt to collect any balances due under the promissory note.

Relief Requested

Claimant requested:

1. Damages according to proof;
2. Interest according to proof;
3. Punitive damages;
4. Attorneys' fees;
5. All sums expended by Claimant in defending himself against the malicious and meritless action filed by one of his former customers;
6. Wait time penalties as provided by law;
7. Costs of suit;
8. Such further relief as deemed proper.

Respondents requested that the claims be dismissed and they be awarded their costs and attorney's fees.

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. Respondents are jointly and severally liable for and shall pay Claimant \$1,500;
2. Each and every other claim, including 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.

Arbitrator Mary Williams dissents as to the amount of compensatory damages awarded to Claimant.

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 \$600 hearing session deposit previously paid by the Claimant. Forum fees are assessed against Claimant for \$1,500 and Respondents, jointly and severally, for \$1,500, calculated as follows:

Total fees assessed (5 hearing sessions @ \$600/session)	\$3,000
Claimant's assessment for forum fees and adjournment fee	\$2,100
Fees paid by Claimant	\$600
Balance Due by Claimant	\$1,500
Respondents' Assessment and Balance Due	\$1,500

An adjournment fee of \$600 was assessed against Claimant and has not been paid.

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

Arbitration Panel

<i>Name</i>	<i>Public/Industry</i>
Mary Williams	Public
Diana Davis	Public
Richard Ramos	Industry

Concurring Arbitrators' Signatures



Diana Davis

Richard Ramos

Dissenting Arbitrator's Signature

Mary Williams

Date Served: 6-5-95

Date of Decision: