

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Kidder, Peabody & Co., Incorporated

Case No. 94-01794

Name of Respondents

Ross A. Freitas
F/S Investments Corp.

REPRESENTATION

For Claimant, Kidder, Peabody & Co., Incorporated ("Kidder"): Richard Kelley, Esq. of Kidder, New York, NY.

For Respondents, Ross A. Freitas ("Freitas") and F/S Investments Corp. ("F/S"): pro se (see "Other Issues").

CASE INFORMATION

Statement of Claim filed May 13, 1994. Claimant's Submission Agreement signed May 11, 1994.

Respondents, Freitas and F/S did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code.

HEARING INFORMATION

On July 17, 1995, in Fort Lauderdale, Florida, a hearing lasting one session was conducted.

CASE SUMMARY

Mr. Freitas opened securities accounts in the Los Angeles, California branch office of Kidder, Peabody on May 15, 1992 in the names of Ross A. Freitas, Account Number 82L-54643-103, and on May 20, 1992 in the name of F/S Investments Inc., Account Number 82L-HO115-103. At that time, Mr. Freitas executed Securities Account Agreements with Kidder, Peabody, individually and on behalf of F/S Investments, which provide in relevant part:

"Any controversy between us (including any controversy between me and your agents, representatives or employees) arising out of or relating in any way to any accounts of or transactions with or for me or to this or any other agreement between us shall be settled by arbitration. Any arbitration between us shall be conducted in accordance with the arbitration rules then in effect of the NASD or of any exchange of which you are a member, as I may elect. If you demand that I make such an election and I addressed to you at your main office in New York City and mailed within five (5) days after my receipt of your demand, then you may make the election."

On May 15, 1993 Mr. Freitas purchased in his individual account (#82L-54643-103) 15,000 shares of Ross Cosmetics Distributor Centers Inc. ("Ross Cosmetics") at \$18.75 for a total price of \$281,252.85. On May 26 1992 and May 27, 1992, Mr. Freitas deposited checks in the amounts of \$110,000.00 and \$30,626.00 respectively to cover the margin positions. Mr. Freitas purchased an additional 31,500 shares of Ross Cosmetics at \$19.25 on May 28, 1992 for a total price of \$606,377.85. On June 5, 1992, \$304,000.00 was transferred from Account 82LH0115-103 (F/S Investments); two checks were also deposited for \$40,000.00 each on June 12, 1992 to cover the margin positions. On June 23, 1992, both of the checks in the amounts of \$40,000.00 were returned due to stopped payment. When Mr. Freitas failed to deposit cash or marketable securities to maintain the margin positions, the account was liquidated on June 12, 15, 16 and 19, 1992, resulting in a debit balance of \$167,080.20.

In addition, on May 18, 1992, Mr. Freitas placed orders on behalf of F/S Investments (#82L-HO115-103) to purchase 11,500 shares of Ross Cosmetics at \$19.00 for a total price of \$218,502.85. On May 27, 1992, a check in the amount of \$110,000.00 was deposited into the account to cover the margin position. On June 3, 1992, \$304,000.00 was deposited into the account and subsequently transferred on June 5, 1993 and a credit was received on June 8, 1992 in the amount of \$110,000.00. Since Mr. Freitas failed to deposit cash or marketable securities to maintain the margin positions, the account was liquidated on June 12, 1992. An additional check in the amount of \$19,990.00 was deposited into the account on June 18, 1992, resulting in a debet balance of \$15,944.40.

RELIEF REQUESTED

Claimant, Kidder Peabody, is asserting a claim against Mr. Freitas, individually, in the amount of \$167,080.20, against F/S Investments in the amount of \$15,944.40 and against Mr. Freitas, individually and as a principal of F/S Investments, for the total sum of \$183,024.60 in connection with the debit balances in his individual account and the account of F/S Investments. The Claimant also asks for interest on the unpaid debit balance from June 25, 1992.

OTHER ISSUES CONSIDERED & DECIDED

Arbitrator, Arnold Sarrow, did not appear at the hearing due to an unexpected medical ailment. The party present at the hearing (Kidder), agreed to proceed with the two arbitrators present. The Respondent did not make an appearance at the hearing.

AWARD

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

Respondents, Ross A. Freitas and F/S Investments Corp., are found liable, jointly and severally, and shall pay to the Claimant the amount of \$218,833.52, inclusive of interest from June 25, 1992 to July 17, 1995.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$750.00 (1 hearing session X \$750.00 per session).

Page 4
NASD Award No. 94-01794
Forum Fees Cont.

Respondents, Freitas and F/S are hereby assessed \$750.00 jointly and severally, payable directly to the Claimant.

The NASD Shall retain the non-refundable filing fee of \$750.00 paid by the Claimant.

The NASD shall retain the session deposit of \$750.00 paid by Claimant.

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

Arbitrator's Signature

Name

Public/Industry

/S/
Ronald Thomas Spann, Esq.

Public

/S/
Edward S. Burstein

Industry

Date of Decision: August 31, 1995