

**N.A.S.D. AWARD**

**NASD Regulation, Inc. Office of Dispute Resolution**

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In the Matter of the Arbitration Between

**Name of Claimants**

Arthur O. & Mildred A. Bachman  
Gladys D. Bernard  
Phyllis G. Collins  
Brandt Family Trust  
Donna L. and John H. Gary  
Irwin Goldstein  
Pearl C. James  
Murray Kalisher  
Edmund & Maureen C. Lunder  
Alfred Mandell  
James R. & Alice M. O'Mara  
Shirley Schiffman  
Harry Whitmer

94-02123

**Name of Respondent**

Kidder, Peabody & Co., Incorporated

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**REPRESENTATION**

For Claimants: Robert Dyer, Esq. of Allen, Dyer, Doppelt, Franjola & Milbrath, P.A., Orlando, FL.

For Respondent: Keith Olin, Esq. of Morgan, Lewis & Bockius, Miami, FL.

**CASE INFORMATION**

Statement of Claim filed: June 7, 1994.

Arthur O. & Mildred A. Bachman's Submission Agreement signed on: February 10, 1994.

Gladys D. Bernard's Submission Agreement signed on: February 14, 1994.

Phyllis G. Collins's Submission Agreement signed on: February 14, 1994.

Brandt Family Trust's Submission Agreement signed on: February 10, 1994.

Donna L. and John H. Gary's Submission Agreement signed on: March 11, 1994.

Irwin Goldstein's Submission Agreement signed on: March 16, 1994.

Pearl C. James's Submission Agreement signed on: March 28, 1994.

Murray Kalisher's Submission Agreement signed on: February 15, 1994.

Edmund & Maureen C. Lunder's Submission Agreement signed on: February 16, 1994.

Alfred Mandell's Submission Agreement signed on: February 7, 1994.

James R. & Alice M. O'Mara's Submission Agreement signed on: February 7, 1994.

Shirley Schiffman's Submission Agreement signed on: February 22, 1994.

Harry Whitmer's Submission Agreement signed on: May 26, 1994.

Respondent's Statement of Answer filed on: October 4, 1994.

Respondent did not file an executed Submission Agreement.

### **HEARING INFORMATION**

On June 17, 1996, September 25, 1997 and December 5, 1997 telephonic pre-hearing conferences lasting three sessions were conducted with the arbitration panel. On February 23, 1998 a telephonic pre-hearing conference lasting one session was conducted with the Chairperson only.

On February 26 and February 27, 1998, as well as March 9, March 10, March 11, March 12 and March 13, 1998 in Tampa, FL, hearings lasting 14 sessions were conducted.

### **CASE SUMMARY**

Claimants alleged the following: that Kidder Peabody & Co. Inc.'s ("Kidder Peabody") marketing and point of contact sales of the Polaris partnerships were undertaken with a deliberate and utterly wanton disregard for the rights of the Claimants; that Kidder Peabody was a wholly owned subsidiary of GE Financial which also owned GE Capital which in turn owned Polaris Management; that Kidder Peabody, therefore, knew or should have known that the statements, sales material and prospectus that were presented to investors contained false and misleading information about the Polaris partnerships; that Kidder Peabody's connection to GE Financial and Polaris Management also indicates that it knew that these partnerships were not safe investments suitable for conservative investors (Claimants alleged GE Capital did not even think the investment strategy of the Polaris partnerships was suitable for their own investment objectives), that Kidder Peabody did not begin selling the Polaris partnerships until the third partnership series; and, that instead of correcting the inadequate and fraudulent disclosure of the early partnerships, Kidder Peabody joined in the scheme and did their part to continue to defraud investors.

Respondent alleged that the Statement of Claim failed to assert a claim upon which relief could be granted and that even if the Statement of Claim is accepted as true, it does not assert any claims that Respondent can be held liable for.

### **RELIEF REQUESTED**

Claimants requested an unspecified amount of compensatory damages plus interest, punitive damages, attorney's fees, costs and expenses and such equitable relief as may be deemed appropriate.

Respondent requested that the claim 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 originals remain on file with NASD Regulation, Inc.

### **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. Respondent Kidder, Peabody & Co., Inc. is found not liable and all claims against them are dismissed.
2. Claimants' requests for compensatory damages, interest, punitive or RICO damages are denied.
3. Each party shall bear their respective costs, including attorney's fees.

### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$10,500.00 (three pre-hearing conferences with the arbitration panel x \$600.00 plus one pre-hearing conference with the Chairperson x \$300.00 plus 14 hearing sessions x \$600.00).

1. Claimants are assessed, jointly and severally, the sum of \$5,250.00 for which NASD Regulation, Inc. shall retain the \$700.00 hearing session deposit previously paid by the Claimants in partial satisfaction thereof leaving a balance due in the sum of \$4,550.00.
2. Respondent Kidder, Peabody & Company, Inc., is hereby assessed \$5,250.00.
3. Claimants are assessed the sum of \$250.00 for the claim filing fee which was previously invoiced.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

**Concurring Arbitrators' Signatures:**

**Name**

**Public/Industry**

/S/

William E. Nodine, Esq.

**Public**

/S/

Joseph I. Amonette

**Industry**

/S/

Jon J. Johnson

**Public**

**6/1/98**

**Date of Decision:** \_\_\_\_\_