

NASD REGULATION, INC. AWARD

---

In the Matter of the Arbitration Between

Name of Claimants

Fahad M. Al Saja and Nouriah A. Al Hamda

vs.

Case No.  
95-00890

Name of Respondents

PaineWebber, Inc.  
Samir G. Sawabini  
William F. Kennedy

---

**REPRESENTATION**

For Claimants Fahad M. Al Saja ("Al Saja") and Nouriah A. Al Hamada ("Al Hamada"), collectively referred to as "Claimants", appeared Edward G. Toptani, Esq., a private practitioner located in New York, New York.

For Respondents PaineWebber, Inc. ("PaineWebber"), Samir G. Sawabini ("Sawabini"), and William F. Kennedy ("Kennedy"), collectively referred to as "Respondents", appeared Brian F. McDonough, Esq., of the firm Shanley & Fisher located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed on: February 17, 1995.

Claimant Al Saja's and Claimant Al Hamada's Submission Agreements were received under cover letter dated: February 17, 1995.

Respondents filed a Joint Statement of Answer on: May 24, 1995.

Respondents failed to file properly executed Submission Agreements as required by Rule 10314(b) of the NASD Regulation Code of Arbitration Procedure (the "Code").

**HEARING INFORMATION**

|                          |                   |             |
|--------------------------|-------------------|-------------|
| Pre-Hearing Conferences: | October 26, 1995  | One Session |
|                          | November 02, 1995 | One Session |
|                          | February 05, 1996 | One Session |
|                          | November 22, 1996 | One Session |
|                          | December 17, 1996 | One Session |

|                         |                    |              |
|-------------------------|--------------------|--------------|
| Hearing Dates/Sessions: | May 14, 1997       | One Session  |
|                         | May 15, 1997       | Two Sessions |
|                         | July 14, 1997      | Two Sessions |
|                         | July 15, 1997      | Two Sessions |
|                         | July 16, 1997      | Two Sessions |
|                         | July 29, 1997      | Two Sessions |
|                         | July 30, 1997      | Two Sessions |
|                         | September 25, 1997 | One Session  |
|                         | September 26, 1997 | Two Sessions |
|                         | October 16, 1997   | Two Sessions |
|                         | October 22, 1997   | Two Sessions |
|                         | November 11, 1997  | Two Sessions |

The pre-hearing conferences were held telephonically with the exception of the pre-hearing conference on February 05, 1996, which was held at the offices of NASD Regulation, Inc.. The hearings were also conducted at the offices of NASD Regulation, Inc. located in New York, New York.

#### CASE SUMMARY

Claimants alleged that they opened an account with Respondent Sawabini with the following conditions set forth at the opening of the account: that the funds in the account were to be placed in investment vehicles that offered the preservation of capital and building of wealth; the account could not be a trading account nor were the funds to be invested in speculative investments. Claimants further alleged that Respondent Sawabini, who was told by Claimants that the account would be unmonitored and under his supervision, engaged in speculative trading, excessive trading, and unauthorized trading on margin. Claimants also alleged that when Respondent Sawabini's handling of the account came to their attention they contacted Respondent Kennedy, the Managing Director, who ignored their request to discuss the handling of the account.

Claimants asserted that Respondents failed to provide them with complete professional services, in accordance with industry rules, regulations, and practices, and thereby breached their contractual and legal duties. Claimants further asserted that Respondents engaged in fraudulent conduct and violated duties they owed to Claimants by directing excessive trading in their account, misrepresenting investments, and directing unsuitable investments. Claimants also asserted that Respondents breached their fiduciary duty by engaging in unauthorized margin trading. Claimants asserted that Respondents failed to supervise or were negligent in their supervision of Respondent Sawabini and Claimants' account.

Respondent PaineWebber maintained that it purchased the assets of Kidder Peabody & Co., Inc. ("Kidder") (where Claimants' account was held) and not the liabilities prior to the date of purchase, and therefore, PaineWebber is not a proper respondent in this action. Respondent PaineWebber further maintained that the claim against them should be dismissed and Kidder be named as the proper respondent, and furthermore, if Claimants are unwilling to make this substitution a motion will be made.

Respondents maintained that the investment objective of Claimants was growth, and that Claimants did not stress the preservation or safety of capital as important. Respondents further maintained that Claimants granted Respondent Sawabini discretionary authority and executed a full trading authorization, and therefore, all trades were fully authorized. Respondents also maintained that Claimants indicated that they were unhappy with the performance of the investments, but failed to mitigate their damages until approximately six months later. Respondents asserted that Respondent Kennedy attempted to contact Claimants to no avail, and then complied with Claimants' written instructions to liquidate the account.

Respondents asserted the following affirmative defenses: Claimants have failed to state a claim upon which relief can be granted; claims are barred by the equitable defenses of estoppel, waiver, ratification, and laches; Kidder and Respondent Kennedy properly supervised Respondent Sawabini; claim for punitive damages is barred by law; Claimants are not entitled to attorneys' fee under the "American Rule" which requires that each party bear its own respective attorneys' fees and Claimants' losses were caused by market forces.

#### **RELIEF REQUESTED**

Claimants requested:

1. Compensatory damages in an amount to be proven at the arbitration, which are approximately \$324,213.71, plus prejudgment interest from June 21, 1994.
2. Compensation for all costs and fees associated with this proceeding, including costs and expenses of expert witnesses.
3. Compensation in a reasonable amount for attorneys' fees.
4. Punitive or exemplary damages in the amount of \$800,000.00.
5. Such other relief as the arbitration panel believed to be appropriate under the circumstances.

Respondents requested that the Statement of 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 original remains on file with the NASD.

The parties stipulated to the following:

1. Kidder be substituted for Respondent PaineWebber in this arbitration.
2. Kidder shall be represented by Brian F. McDonough, Esq., attorney for PaineWebber.
3. No service or filing of any additional documents aside from this stipulation is required to effect the substitution.

4. Kidder adopts the allegations made by PaineWebber in any and all pleadings or correspondence served and/or filed to date (including, without limitation, the Answer to the Statement of Claim).

#### 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 be and hereby is liable and shall pay to Claimants the sum of \$50,000.00 in compensatory damages.
2. Claimants request for punitive damages is hereby denied.
3. Each party shall bear its respective costs, including attorneys' fees.
4. All other requests for relief are hereby denied.

#### FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following arbitrators have determined that NASD Regulation, Inc. shall retain the \$250.00 non-refundable filing fee previously submitted by Claimants and have assessed the following forum fees:

|                                      |   |             |
|--------------------------------------|---|-------------|
| 5 Pre-hearing conferences x \$300.00 | = | \$ 1,500.00 |
| 22 Hearing sessions x \$950.00       | = | \$20,900.00 |
| Total Forum Fees                     | = | \$22,400.00 |

The arbitrators have determined that Claimants and Respondent Kidder Peabody shall each pay one-half of the total forum fees assessed.

1. Claimants be and hereby are jointly and severally liable for the sum of \$11,200.00, representing one-half of the total forum fees assessed. Claimants previously deposited \$750.00 with NASD Regulation, Inc., and therefore, Claimants shall pay the balance of \$10,450.00.
2. Respondent Kidder Peabody be and hereby is liable for the sum of \$11,200.00, representing one-half of the total forum fees assessed.
3. Claimants be and hereby are jointly and severally liable and shall pay the sum of \$1,000.00 for the postponement fee.
4. Respondent Kidder Peabody be and hereby is liable and shall pay the sum of \$500.00 for the Member Surcharge. Respondent Kidder Peabody has not submitted the sum of \$500.00, and therefore, owes the Member Surcharge.

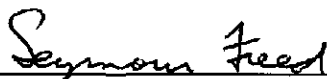
Fees are payable to NASD Regulation, Inc..

**ARBITRATORS' SIGNATURES**

I, Jeffrey S. Eisenberg, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Jeffrey S. Eisenberg, Esq.  
Public Chairperson

I, Seymour Freed, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
\_\_\_\_\_  
Seymour Freed  
Public Panelist

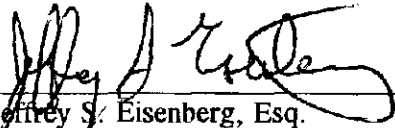
I, Frank G. Piazza, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Frank G. Piazza  
Industry Panelist

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

**ARBITRATORS' SIGNATURES**

I, Jeffrey S. Eisenberg, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
\_\_\_\_\_  
Jeffrey S. Eisenberg, Esq.  
Public Chairperson

I, Seymour Freed, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Seymour Freed  
Public Panelist

I, Frank G. Piazza, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Frank G. Piazza  
Industry Panelist

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