

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

James A. Beall

NASD Arbitration
No. 95-01257

Name of Respondent(s)

Kidder, Peabody & Co., Inc.
Douglas J. McCaslin
Matthew R. Miller

REPRESENTATION

For Claimant: Timothy S. DeJong, Esq., Stoll Stoll Berne Lokting
& Shlachter P.C., Portland, Oregon

For Respondents: William H. Phelps, Esq., Kidder, Peabody & Co.,
Inc., Los Angeles, California

CASE INFORMATION

Statement of Claim filed: March 9, 1995

Supplement to Statement of Claim filed: February 19, 1996

Claimant's Submission Agreement signed: March 8, 1995

Joint Statement of Answer filed by Respondents: May 4, 1995

Respondents' Reply to Supplement to Statement of Claim filed:
March 12, 1996

Respondents' Submission Agreements signed as follows:

Kidder, Peabody & Co., Inc.: May 4, 1995

Douglas J. McCaslin: May 19, 1995

Matthew R. Miller: May 22, 1995

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): April 3, 1996 (two sessions)
April 4, 1996 (one session)

Hearing Location: Portland, Oregon

CASE SUMMARY

Claimant alleged that his investments in Templeton Emerging Markets Income Fund and ACM Managed Dollar Income Fund were completely inappropriate in light of Claimant's explicit, short-term investment needs and in light of Claimant's instructions for safe, short-term investments. Claimant further alleged that the subject investments were too big (each constituted 97 1/2% of the \$200,000.00 Claimant had available), they were new issues (i.e., neither had an established track record), they clearly were high risk in nature and dependent upon third-world investments, and they involved an up-front payment to the broker of which Claimant was not informed and which virtually ensured that the full value would be impossible to recover in any short period of time. Claimant further alleged that he was not told that such high percentages of his available funds would be placed in a single investment; that he was not told that placing such a high percentage in a single investment would be deemed highly unusual and highly inappropriate under the circumstances; he was not told that these funds were new issues, that they had no track record and that investing in such new issues would not be deemed safe or appropriate for a short-term investor. Claimant further alleged that he was not told that these funds were considered high risk and volatile both by the securities industry and by the funds themselves at the time these investments were made; he was not told that such investments would be considered very unusual (even foolish) for an investor with Claimant's short-term needs; to the contrary, Claimant was reassured repeatedly that all of the his investments were safe and appropriate under the circumstances; and that he was repeatedly

assured that each downturn was just a short-term blip or due to very unusual circumstances beyond anyone's control. Claimant further alleged deception and misrepresentation, fraud, churning and failure to supervise.

Respondents denied each and every allegation made in Claimant's Statement of Claim and alleged that Claimant is a knowledgeable, experienced, careful and highly intelligent investor. Respondents further alleged that the investment objectives indicated on Claimant's new account form are income and growth and that a review of the investments in Claimant's account, including the two transactions at issue in this matter, will reveal that Claimant's objectives for his account were properly implemented. Respondents further alleged that Claimant's Claim represents nothing more than an unjustifiable attempt to recover simple investment losses and that Respondents acted appropriately at all times with respect to Claimant. Respondents further alleged that Claimant, a seasoned, sophisticated and affluent attorney, has claimed well after the fact that his investments are somehow unsuitable simply because they suffered a decline in value; and that neither Kidder, Peabody & Co., Inc., Matthew R. Miller nor Douglas J. McCaslin would expect to share in the gains if these investments had made money; conversely, simply because they declined, Respondents cannot be held responsible for market losses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$97,084.00, plus treble damages in the amount of \$291,252.00, plus punitive damages in the amount of \$500,000.00. Claimant further requested damages in accordance with Claimant's churning claim, including but not limited to the commissions paid by Claimant, and requested prejudgment interest.

Respondents requested dismissal of Claimant's claims.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 National Association of Securities Dealers, Inc. (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. All claims by Claimant against Respondent Matthew R. Miller are dismissed.
2. In satisfaction of Claimant's claims, Respondents Kidder, Peabody & Co., Inc. and Douglas J. McCaslin are jointly and severally liable for and shall pay to Claimant the sum of \$30,000.00, apportioned as follows: \$20,000.00 by Respondent McCaslin and \$10,000.00 by Respondent Kidder, Peabody & Co., Inc.
3. Claimant's claim for punitive damages is denied.
4. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

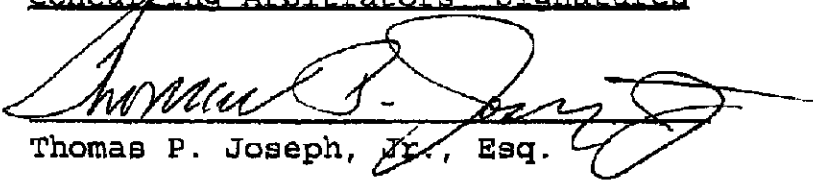
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$1,000.00 hearing session deposit previously deposited by the Claimant. Forum fees are assessed against Kidder, Peabody & Co., Inc., solely, in the amount of \$3,000.00, calculated as follows: Three hearing sessions times \$1,000.00.

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Thomas P. Joseph, Jr., Esq.	Public Arbitrator
Gordon MacMillan	Public Arbitrator
Daniel Dunnington	Industry Arbitrator

Concurring Arbitrators' Signatures



Thomas P. Joseph, Jr., Esq.

Gordon MacMillan

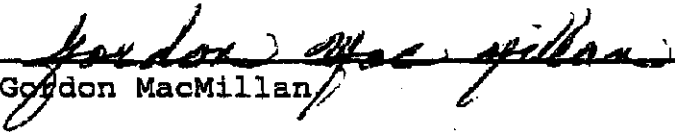
Daniel Dunnington

Date of Decision: _____

Date Served: 5/30/96

Concurring Arbitrators' Signatures

Thomas P. Joseph, Jr., Esq.


Gordon MacMillan

Daniel Dunnington

Date of Decision: May 13 1996

Date Served: 5/30/96

Concurring Arbitrators' Signatures

Thomas P. Joseph, Jr., Esq.

Gordon MacMillan

Daniel Dunnington
Daniel Dunnington

Date of Decision: _____

Date Served: 5/30/96