

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Demetres Tsimis

95-01410

Name of Respondent

Kidder, Peabody & Co., Inc.

REPRESENTATION

For Claimant Demetres Tsimis ("claimant") appeared Carla E. Craig, Esq., with the firm Hertzog, Calamari & Gleason, New York City, New York.

For Respondent Kidder, Peabody & Co., Inc. ("respondent") appeared Jodi M. Posner, Esq., Assistant General Counsel with Kidder, Peabody & Co., Inc.

CASE INFORMATION

The Statement of Claim was filed on March 20, 1995. Claimant's Submission Agreement was executed on March 16, 1995.

Respondent's Statement of Answer was filed on May 15, 1995. On May 11, 1995, Jodi M. Posner executed a Submission Agreement on behalf of respondent in her capacity as Assistant Vice President of Kidder, Peabody & Co., Inc.

On June 30, 1995, claimant filed an amendment to include an additional claim. Respondent responded to the amendment on October 27, 1995.

HEARING INFORMATION

Pre-hearing Dates/Sessions: August 17, 1995	-	One Session/One Arbitrator
September 21, 1995	-	One Session/Full Panel

Hearing Dates/ Sessions:	December 13, 1995	-	Two Sessions
	December 14, 1995	-	Two Sessions
	December 15, 1995	-	Two Sessions

The hearings were held at the National Association of Securities Dealers, Inc. offices located in New York, New York.

CASE SUMMARY

Claimant Demetres Tsimis was employed by respondent Kidder Peabody as a senior trader of CMO derivatives. Claimant alleged that during each year that he was employed by respondent as a trader, his compensation consisted of a periodic "salary" payment and a year-end payment. For the year ending December 31, 1992, claimant's compensation was \$2.4 million dollars of which \$2.3 million consisted of the year-end payment. For the year ending December 31, 1993, claimant's total compensation was \$2,050,000.00, of which \$1,950,000.00 consisted of the year-end payment. Thereafter, in November of 1994, claimant was allegedly informed that his employment with respondent would be terminated in December 1994. Claimant further alleged that he was advised that the reason for his termination was the sale of respondent to PaineWebber, Inc.

Claimant alleged that although he was responsible for supervising a trading group which was successful in 1994, he only received compensation in the amount of \$100,000.00. Claimant was allegedly offered \$220,000.00 in exchange for executing a general release, including a waiver of any claim to further compensation from respondent, and a confidentiality agreement. Claimant rejected the offer and maintained that other traders at his level received year-end payments from respondent that were larger and constituted a much greater percentage of the year-end payments received by those individuals for 1993. Claimant maintained that the reason he did not receive the compensation to which he was entitled for 1994 was because the individual responsible for recommending the amount of his year-end payment was motivated by animosity toward claimant because that individual was seeking to purchase the position traded by claimant's group at the time of the sale of respondent to PaineWebber. However, claimant maintained that he advised senior management that in his opinion that the value of the position traded by claimant's group would be maximized by liquidating it over an extended period of time.

Claimant further alleged that he was subpoenaed by the Securities and Exchange Commission ("SEC") to testify in connection with an investigation by the SEC of a mutual fund which bought certain derivatives from respondent in 1993 and 1994. Claimant also alleged that a request had been made to respondent to request pay the cost of his representation in connection with the subpoena, but that his request was refused. Claimant further alleged that respondent instead offered to permit in-house counsel to represent him in connection with his testimony, but that, in light of this arbitration, there was an obvious conflict that would prevent respondent from representing him and, therefore, claimant requested indemnification for his attorneys fees and costs incurred in connection with his testifying before the SEC.

Respondent denied all allegations of wrongdoing asserted against it in the statement of claim.

Respondent maintained that claimant's assertion that the amount of his year-end payment was motivated by animosity was based on speculation and was without merit. Respondent contended that Kidder Peabody's senior management team was required to provide bonus award amounts for each employee in their department to their human resources manager no later than November 12, 1994. Respondent maintained that the requested data was provided to human resources on November 12, 1994 and revised on November 14, 1994 and that claimant's memorandum regarding the derivative position was not distributed until November 15, 1994.

In addition, respondent contended that the CMO trading desk, managed as a team effort, had disastrous results in 1994 which resulted in reductions in bonuses for every person on the CMO trading desk. Further, respondent maintained that the year-end bonus was purely discretionary and management had sole discretion to determine if any bonus was to be awarded to a particular employee and the amount of the bonus.

In response to claimant's claim for indemnification of attorneys' fees and costs incurred in providing testimony before the SEC, respondent maintained that such claim had no legal basis and was not covered by Kidder's By-Laws. Specifically, respondent maintained that, since claimant was not a target and has not been threatened to be made a target of the SEC investigation, claimant failed to satisfy the threshold condition of the By-Laws which required the person seeking indemnification to have been a person made or threatened to be made a party to any action, suit or proceeding.

RELIEF REQUESTED

Claimant requested an award against respondent of at least \$1.5 million dollars in additional compensation for 1994; punitive damages in an amount to be determined by the arbitrators; attorneys' fees and costs incurred in both bringing this arbitration and in past collection attempts; and pre-award interest at the rate of 9% from December 12, 1994 to the date of payment of the award pursuant to Rule 5004 of the New York Civil Practice Law & Rules.

Claimant also requested indemnification by way of reimbursement from respondent for his actual attorneys' fees and costs incurred in connection with the SEC subpoena, including without limitation, his attorneys' fees incurred in preparing for the attending the deposition with counsel.

Respondent requested that claimant's claims be dismissed in their entirety.

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. Respondent be and hereby is liable and shall pay to the claimant the sum of \$296,400.00, plus interest at 9% per annum from February 1, 1995 until the date the award is fully satisfied.
2. Respondent be and hereby is liable and shall pay to the claimant the sum of \$2,800.00, to reimburse claimant for expenses incurred in connection with the SEC subpoena.
3. Claimant's request for attorneys' fees be and hereby is denied.
4. Claimant's request for punitive damages be and hereby is denied.
5. Each party shall bear their respective costs, including any costs incurred in the transcription of the taped recorded telephone conversations.
6. All other claims are hereby denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee previously submitted by Claimant and have assessed the following forum fees:

1 pre-hearing conference with one arbitrator	= \$ 300.00
1 pre-hearing conference with full panel	= \$1,000.00
6 hearing sessions x \$1,000.00	= <u>\$6,000.00</u>
Total	= \$7,300.00

1. Claimant be and hereby is liable for the sum of \$3,650.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$1,000.00 with the NASD and, therefore, Claimant is liable and shall pay to the NASD the sum of \$2,650.00.
2. Respondent be and hereby is liable and shall pay to the NASD the sum of \$3,650.00, representing one-half of the total amount of forum fees assessed.

ARBITRATORS' SIGNATURES

Therese M. Obring

Therese M. Obring, Esq.
Chairperson - Industry Arbitrator

Mark R. Greenberg
Industry Arbitrator

Peter Bennett, Esq.
Industry Arbitrator

Date of decision: March 6, 1996

I, Therese M. Obring, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Therese M. Obring

Therese M. Obring, Esq.

ARBITRATORS' SIGNATURES

Therese M. Obringer, Esq.
Chairperson - Industry Arbitrator

Mark R. Greenberg
Mark R. Greenberg
Industry Arbitrator

Peter Bennett, Esq.
Industry Arbitrator

Date of decision: March 6, 1996

I, Mark R. Greenberg, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Mark R. Greenberg
Mark R. Greenberg

ARBITRATORS' SIGNATURES

Therese M. Obringer, Esq.
Chairperson - Industry Arbitrator

Mark R. Greenberg
Industry Arbitrator



Peter Bennett, Esq.
Industry Arbitrator

Date of decision: March 6, 1996

I, Peter Bennett, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.



Peter Bennett, Esq.