

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimants

Terrance Lee McCarty
Margaret E. McCarty.

NASD Arbitration
#95-01520

vs.

Name of Respondents

Kidder, Peabody & Co., Inc.
David Swanson
Matthew Miller

REPRESENTATION

For Claimants: Thomas K. Coan, Esq., Portland, Oregon

For Respondents: William H.. Phelps, Esq., Kidder, Peabody & Co., Los Angeles, California,
and Thomas C. Sand, Esq., Miller, Nash, Wiener, Hager & Carlsen, Portland,
Oregon

CASE INFORMATION

Statement of Claim filed: March 27, 1995

Amended Claim filed: March 7, 1996

Second Amended Claim filed: March 28, 1996

Third Amended Claim filed: April 11, 1996

Fourth Amended Claim filed: May 7, 1996

Claimant's Submission Agreement signed: March 23, 1995

Joint Statement of Answer filed: June 5, 1995

Joint Answer to Third Amended Claim filed: April 29, 1996

Joint Answer to Fourth Amended Claim filed: June 11, 1996

Respondents' Submission Agreements signed:

Kidder, Peabody: June 1, 19956

David Swanson: June 19, 1996

Matthew Miller: June 19, 1996

HEARING INFORMATION

Pre-hearing telephone conferences were held as follows:

April 23, 1996 - 1 session

June 17, 1996 - 1 session

The evidentiary hearing was held in Portland, Oregon, as follows:

June 18, 1996 - 2 sessions

June 19, 1996 - 2 sessions

June 20, 1996 - 2 sessions

CASE SUMMARY

Claimants alleged unsuitable and unauthorized trading, churning, fraud, prohibited transactions in IRA and ERISA accounts, violation of the Securities and Exchange Act of 1934, violation of Oregon Securities Laws, the Securities Act of Washington, federal and Oregon Rico violations, negligent misrepresentation, negligence and failure to supervise with respect to Claimants' investments in municipal and corporate bonds, common stocks and master limited partnerships, including initial public offerings.

Respondents denied the allegations of the claims, and asserted that each investment was discussed with and specifically approved in advance by Claimants. Respondents also stated that Claimant Terrance McCarty was heavily involved in all aspects of the investment portfolio. Respondents also asserted that initial public offerings are not prohibited transactions under the Internal Revenue Code, and further that ERISA, with its accompanying fiduciary duties and prohibited transactions, does not cover IRA accounts.

RELIEF REQUESTED

Claimants requested damages of \$287,000, plus statutory rescission damages as provided under Oregon and Washington securities laws, punitive damages of \$100,000, costs of arbitration

and attorney's fees.

Respondents requested dismissal of all claims.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the first hearing session, Claimants filed an application in the U.S. District Court in Portland, Oregon, seeking relief under Section 5 of the Federal Arbitration Act, 9 U.S.C. 81-4. The application sought to have the Federal District Court reinstate two previously empaneled arbitrators who had been successfully challenged for cause. The court denied the application.

At hearing, Claimants' counsel again objected to the removal for cause of the two challenged arbitrators, but stated that he wanted to proceed under objection as to the arbitrator appointment process, and that there was no objection to the presiding arbitrators as individuals. The panel denied the objection.

Respondents' counsel moved to dismiss the federal and Oregon Rico and ERISA claims. Claimants' counsel agreed the Oregon Rico claims should be dismissed, but opposed the dismissal of the federal Rico and ERISA claims.

The panel dismissed all Oregon Rico claims and the ERISA claims.

The parties have agreed to receive 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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted against Matthew Miller are dismissed in their entirety. All references to this case are to be expunged from Mr. Miller's CRD record.
2. Claimants' federal Rico and punitive damages claims are dismissed.
3. Respondents Kidder, Peabody and David Swanson are jointly and severally liable for and shall pay to Claimants the sum of \$40,000 in satisfaction of all claims.
4. The parties shall each bear their respective costs of arbitration, including attorney's fees.

FORUM FEE

Pursuant to Section 43 (c) of the Code of Arbitration Procedure, the NASD shall retain Claimants' \$200 non-refundable filing fee. Forum fees are to be divided between the parties as follows:

Total fees:

2 pre-hearing telephone conferences @ \$300/session	\$600
6 hearing sessions @ \$750/session	<u>\$4500</u>
Total	\$5100
 Claimants' one-half share	 \$2550
Credit for deposit	<u>(450)</u>
	\$2100

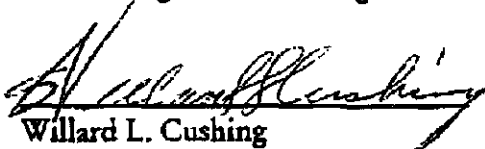
Respondents one-half share	\$2550

Fees are payable to the NASD, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Willard L. Cushing	Public
Clyde Fahlman	Public
Rodney O. McWhinney	Industry

Concurring Arbitrators Signatures


Willard L. Cushing

Clyde Fahlman

Rodney O. McWhinney

Date of Decision: July 8, 1996
Date Served: 07/22/96

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Concurring Arbitrators Signatures

Willard L. Cushing



Clyde Fahlman

Rodney O. McWhinney

Date of Decision: 6-20-96

Date Served 07/22/96