

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

American Petroleum Institute

95-02252

Name of Respondent

Kidder, Peabody & Co., Incorporated
Jeff Bartlam

REPRESENTATION

Claimant American Petroleum Institute ("Claimant") was represented by William J. Bethune, Esq., Marsh Fleischer & Quiggle, Bethesda, MD

Respondents Kidder, Peabody, & Co., Incorporated ("Kidder Peabody") and Jeff Bartlam ("Bartlam") were represented by Richard Kelly, Associate General Counsel, Kidder, Peabody & Co., Incorporated, New York, NY

CASE INFORMATION

The Statement of Claim was filed on May 9, 1995
Claimant's Submission Agreement was signed on April 26, 1995

The Joint Statement of Answer of Kidder Peabody and Bartlam (collectively "Respondents") was filed on July 12, 1995
Kidder Peabody's Submission Agreement was signed on July 12, 1995
Bartlam's Submission Agreement was signed on July 31, 1995

HEARING INFORMATION

Hearing Date/Sessions: March 20, 1996/two sessions

Hearing Location: NASD Inc.
Washington, DC

CASE SUMMARY

Claimant alleged, among other things, that Respondents misrepresented that a redemption fee could be avoided if Claimant waited until March 7, 1994 to liquidate Claimant's position in the Fortress Fund Account. Claimant alleged that this material misrepresentation resulted from Respondents' negligence. Claimant alleged that Claimant purchased Fortress Fund shares, valued at \$4.5 million dollars in 1992, prior to Claimant establishing a relationship with Respondents in July 1993 and opening an account with them in September 1993. Claimant alleged that Respondents

offered to evaluate and recommend an alternative investment strategy for Claimant's funds committed to Fortress Fund. Claimant alleged that Bartlam represented to Claimant that Claimant would pay a redemption fee, or deferred sales charge, in the approximate amount of \$40,000.00, if liquidation of Claimant's Fortress Fund positions occurred within two years of the date of purchase. Claimant alleged that Claimant reasonably relied upon misrepresentations conveyed by Bartlam, and upon Respondents' advice, held the Fortress Fund shares from September 1993 until March 7, 1994 in order to avoid the fee. Claimant alleged that when Claimant liquidated Fortress Fund on March 7, 1994, Claimant was assessed a redemption fee of \$39,061.55. Claimant alleged that Bartlam misrepresented that the Fortress Fund would have to be held two (2) years from date of purchase when, in fact, the Fund would have to be held four (4) years to avoid a redemption fee. Claimant alleged that Claimant reasonably relied upon Respondents' misrepresentation and because Claimant held the Fund for several months longer than it otherwise would have (and incurred the same fee), Claimant was damaged by loss of the money Claimant would have earned if the position were sold earlier. Claimant alleged that Respondents are liable for that loss.

Respondents categorically denied all allegations of wrong-doing. Respondents maintained that Bartlam informed Claimant that Claimant could avoid a redemption fee if Claimant held the Fortress Fund shares for two years from the date of purchase based on erroneous information Bartlam received directly from the Fortress Fund by oral communication from the Fund, and according to a prospectus sent by the Fortress Fund. Respondents maintained that Claimant's Comptroller stated that Claimant had received the same incorrect information from other sources. Respondents maintained that Bartlam gave this information to Claimant three months prior to Claimant opening an account with Kidder Peabody. Respondents maintained that after Claimant liquidated the Fortress Fund, Claimant complained about the redemption fee but that Fortress Fund refused to reverse the charge notwithstanding the earlier conversations. Respondents maintained that Fortress Fund offered to correct the problem by rescinding the sale and returning the fee. Respondents maintained that Claimant did not have an account with Respondents at the time of the purchase of Fortress Fund and that Claimant should be charged with the responsibility of knowing the characteristics of Claimant's own investment. Respondents maintained that Claimant did not have an account with Respondents at the time Bartlam obtained, and provided to Claimant, the erroneous information concerning the redemption fee on Fortress Fund. Respondents maintained that Respondents earned no fee for either the purchase or sale of Claimant's Fortress Fund assets. Respondents maintained that Claimant suffered no loss for retaining the investment for the additional time and that, in fact, the value of the investment increased during that term, and that any loss suffered by Claimant was the result of Claimant's own investment decisions and faulty information provided to the parties by Fortress Fund.

RELIEF REQUESTED

Claimant requested relief at the hearing in the amount of \$20,779.00 as well as costs and fees incurred in the arbitration proceeding.

Respondents requested at the hearing that the Statement of Claim be denied in its entirety, and costs and fees, including attorneys' fees, be assessed to Claimant and that any reference to fraudulent misrepresentations on Bartlam's U-4 or U-5 be removed.

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.

After consideration of Respondents' Motion to Dismiss and Claimant's Response thereto, the panel denied the Motion to Dismiss.

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. That Claimant's claim for damages is denied.
2. That Respondents should have any reference to fraudulent misrepresentations on Bartlam's U-4 or U-5, as a result of the Statement of Claim, expunged.
3. That each party shall bear its own expenses, including attorney's fees.
4. That any relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions X \$400 = \$800.00

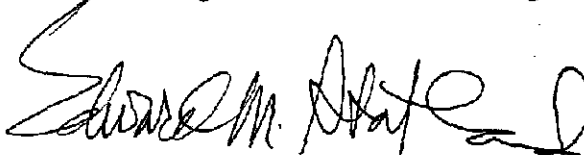
Forum Fees assessed against Claimant. Claimant shall receive credit for the \$400.00 hearing session deposit previously submitted to the NASD leaving a net assessment to Claimant of \$400.00.

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

Date

3-22-96

Concurring Arbitrators' Signatures



Edward M. Statland, Presiding
Public Arbitrator

Robert L. Dennis
Public Arbitrator

Ida C. Draim
Industry Arbitrator

Date Decision Served by NASD: March 29, 1996

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

Date

Concurring Arbitrators' Signatures

Edward M. Statland, Presiding
Public Arbitrator

3-25-96

Robert L. Dennis
Robert L. Dennis
Public Arbitrator

Ida C. Draim
Industry Arbitrator

Date Decision Served by NASD: March 29, 1996

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

Date

Concurring Arbitrators' Signatures

Edward M. Statland, Presiding
Public Arbitrator

Robert L. Dennis
Public Arbitrator

3/27

Ida C. Drain
Ida C. Drain
Industry Arbitrator

Date Decision Served by NASD: March 29, 1996