

AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Atlantic Securities & Capital Mgmt

vs.

Case No.
95-02912

Name of Respondent

Kidder, Peabody & Co., Incorporated

REPRESENTATION

For Claimant, Atlantic Securities & Capital Management, Inc. ("Claimant") Steven N. Fuller, Esq. from the law firm of Peabody & Brown located in Boston, Massachusetts.

For Respondent, Kidder Peabody & Co. ("Respondent"), Peter R. Pendergast, Esq., located Boston Massachusetts.

CASE INFORMATION

Statement of Claim was filed on June 13, 1995.

Claimant's Submission Agreement was signed on June 8, year not provided.

Statement of Answer was filed by Respondent on August 18, 1995.

Respondent did not execute a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions:	May 16, 1996	- 2 sessions
	May 17, 1996	- 2 sessions
	June 25, 1996	- 2 sessions
	June 26, 1996	- 2 sessions
	June 28, 1996	- 2 sessions
	September 23, 1996	- 2 sessions
	September 24, 1996	- 2 sessions
	September 24, 1996	- 2 sessions
	October 1, 1996	- 2 sessions

Hearing Location: NASD Regulation offices located at 260 Franklin Street, Boston, Massachusetts.

CASE SUMMARY

In its Statement of Claim Claimant alleges that it filed this claim to recover damages as a result of Respondent's failure to pay for and accept delivery of \$10,000,000 in Mexico Par Bonds 6.25 % Maturing 2019 ("Brady Bonds") purchased on December 29, 1994. Claimant also alleges that one of its employee

negotiated with Respondent to sell the Brady Bonds at \$55 7/8 during a time when the Bonds were increasing in price. Claimant further alleges that after the deal was confirmed, Respondent called back and reneged on the trade because the price of Brady Bonds had declined in value. Claimant states that because it was a start up institutional broker, it was forced to sell the Brady Bonds at a loss of \$262,000, which placed the firm in immediate violation of regulatory net capital rules and it was ordered to cease its operations.

Claimant also alleged that the claims are for Respondent's (1) intentional, willful, reckless, fraudulent and negligent Statements and misrepresentation; (2) violation of federal and state securities law; (3) breach of contract and breach of implied covenant of good faith and fair dealing; (4) promissory estoppel; and (5) unfair and deceptive trade practices in violation of M.G.L. c.93A.

Respondent denies the existence of any contract, denies that it reneged on the trade and denies liability.

Respondent maintains that based upon industry practice, the terms used by the parties did not constitute a contract. Respondent also maintains that based upon industry standards there could not have been a contract since Claimant's employee knew that the trade had to be accepted by the trader/buyer. Respondents further maintains that Claimant's employee was inexperienced, without proper training and supervision and was overly enthusiastic when he announced that he was going to do Claimant's second trade.

RELIEF REQUESTED

Claimant requests an award of compensatory damages, trebled together with an award of attorneys fees and costs.

Respondent requests that the claims be denied.

OTHER ISSUES CONSIDERED & DECIDED

The Award in this matter has been executed in counterpart copies and the parties will receive conformed copy of the Award while the original remains on file with NASD Regulation, Inc.

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. Respondent, Kidder, Peabody & Co., is hereby liable and shall pay Claimant Two Hundred Eighty Seven Thousand, Five Hundred Dollars and Zero Cents (\$287,500.00).
2. Respondent, Kidder Peabody, Inc., is further liable for interest in the amount of Twenty Two Thousand, Nine Hundred and Sixty Dollars and Zero Cents (\$22,960.00).
3. All other claims for relief including treble damages and attorney's fees are denied.

FORUM FEES

Pursuant to Rule 10334 of the *Code of Arbitration Procedure* (formerly Section 44(c)), the following Forum Fees are assessed.

Non-refundable Filing Fee: \$500.00
Hearing Session Fees: \$16,000.00 (16 sessions @ \$1,000.00 per session)
Postponement Fee: \$1,000.00 (hearing dates of August 29 and 30, 1996 by Respondent)
Total Fees: \$17,500.00

1. Claimant is assessed a surcharge of \$500.00 and tape duplication fees of \$15.00 Claimant previously paid \$1,500.00 and is entitled to a refund of \$985.00.
2. Respondent is assessed all forum fees totalling \$17,500.00.
3. Respondent is further assessed surcharge of \$500.00 and \$255.00 for duplication of tapes.
4. Respondent previously paid \$255.00 and owes a balance of \$18,000.00. Respondent shall satisfy the fees assessed by reimbursing Claimant \$985.00 and by remitting the balance \$17,015.00 to the NASD Regulation, Inc.

Fees are payable to the NASD Regulation, Inc.

ARBITRATION PANEL

Paul V. Curcio, Esq.	-	Industry Chairperson
Mark J. Gianno, CPA	-	Industry Panelist
Brian W. McDonald	-	Industry Panelist

Concurring Arbitrator's Signature



Paul V. Curcio, Esq.

Date of Decision: December 6, 1996

FORUM FEES

Pursuant to Rule 10334 of the *Code of Arbitration Procedure* (formerly Section 44(c)), the following Forum Fees are assessed.

Non-refundable Filing Fee: \$500.00
Hearing Session Fees: \$16,000.00 (4 sessions @ \$1,000.00 per session)
Postponement Fee: \$1,000.00 (hearing dates of August 29 and 30, 1996 by Respondent)
Total Fees: \$17,500.00

Claimant is assessed a surcharge of \$100.00 and tape duplication fees of \$15.00. Claimant previously paid \$1,500.00 and is entitled to a refund of \$985.00.-

Respondent is assessed all forum fees totaling \$17,500.00.

Respondent is further assessed surcharge of \$500.00 and \$255.00 for duplication of tapes.

Respondent previously paid \$255.00 and owes a balance of \$18,000.00. Respondent shall satisfy the fees assessed by reimbursing Claimant \$985.00 and by remitting the balance \$17,015.00 to the NASD Regulation, Inc.

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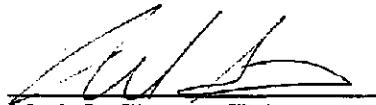
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Concurring Arbitrator's Signature


Mark J. Gianno, CPA

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