

4/4/96

**NASD AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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**In the Matter of the Arbitration Between**

Henry L. Nadler, MD, and  
Benita Nadler,

**Claimants,**

**v.**

**No. 95-04544**

Michael E. Dockendorf, and  
Kidder, Peabody & Co., Incorporated,  
**Respondents.**

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**REPRESENTATION OF PARTIES**

Henry L. Nadler, MD, and Benita Nadler ("Claimants") were represented by John R. Callahan, Esq.,  
Scottsdale, Arizona.

Michael E. Dockendorf ("Dockendorf"), and Kidder, Peabody & Co., Incorporated ("KPC")  
(collectively referred to as "Respondents") were represented by William H. Phelps, Esq., Kidder,  
Peabody & Co., Incorporated, Los Angeles, California.

**CASE INFORMATION**

Claimants' Statement of Claim was filed on or about September 14, 1995. Claimants' Submission  
Agreement was signed on August 21, 1995.

Respondents' Statement of Answer was filed on or about November 16, 1995. Respondents'  
Submission Agreements were signed on December 5, 1995, and November 16, 1995 respectively.

**HEARING INFORMATION**

The hearing was held on March 6, 7, 1996 for two (2) sessions each day, and March 8, 1996 for three  
(3) sessions in Scottsdale, Arizona for a total of seven (7) sessions.

**CASE SUMMARY**

Claimant alleged that Respondents: made unauthorized trades and prohibited purchase of 2,500  
shares of MedImmune even though the Dockendorf and the Claimants had a prior understanding  
prohibiting such a purchase; Dockendorf recommended that Claimants purchase for their account  
9,000 shares of OESI Power without proper and careful analysis and investigation prior to the  
purchase; Dockendorf failed to disclose the speculative nature of the OESI investment; repeatedly

turned over Claimants' stocks; and made unwarranted speculation; failed to preserve claimants' capital. Claimants further alleged that KPC failed to manage and properly supervise Dockendorf.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that: Claimants wanted and directed an aggressive, speculative trading account; Claimants were suitable for such activity given their experience, net worth, income and temperament; Claimant had traded the MedImmune stock numerous times during 1992 and 1993 making a substantial profit; Claimants directed the activity in their account; Claimants gave prior approval to all transactions; Claimants did not complain about the MedImmune transaction until eight (8) months after the trade took place; Claimants had granted Dockendorf full trading authority; Claimant was intensely interested in volatile stocks, frequently took significant positions, utilized margin excessively, and sought quick trading profits; and Claimant was at all times aware of the commissions he was paying, and of the margin debt status of the account.

### **RELIEF REQUESTED**

Claimants requested an award against the Respondents as follows: \$156,869.64 in commissions paid, MedImmune losses of \$25,480.70, and OESI Power losses of \$22,221.00 which total \$204,571.34; attorneys' fees; costs; and pre-judgment and post-judgment interest. Claimant alternatively requested compensatory damages of not less than \$250,000.00, punitive damages of \$249,000.00, attorneys' fees, interest, and costs.

Respondents requested that the claims asserted against them be dismissed in its entirety and that Claimants take nothing thereby.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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:

Respondents are jointly and severally liable for, and shall pay to the claimants the sum of \$60,000.00 as satisfaction of their claims for compensatory damages herein.

Each party shall bear its own costs and expenses associated with this arbitration, including attorneys' fees.

All claims/requests for relief not specifically set forth in this Award are, and each of them, denied with prejudice.

### FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were seven (7) sessions x \$750 = \$5,250 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimants.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$350 previously paid by KPC.

Additional forum fees in the amount of \$2,625 are assessed jointly and severally against the Respondents.

Additional forum fees in the amount of \$1,875 are assessed against the Claimants.

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

Dated: -

R. D. Boone

s/s

March 22, 1996

R. D. Boone

Public Arbitrator, Presiding Chair

Robert C. Hubbard

s/s

March 22, 1996

Robert C. Hubbard

Public Arbitrator

Seth Schindler

s/s

March 25, 1996

Seth Schindler

Industry Arbitrator