

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Patricia Doxzen

95-04803

Name of Respondent

Kidder, Peabody & Co., Incorporated

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 11, 1995 Claimant Patricia Doxzen ("Claimant"), through her representative Mary Gately Bodley, Esq., of Towson, Maryland, alleged that Respondent Kidder, Peabody & Co., Inc., ("Respondent") breached her Separation Agreement and Release when it failed to pay her \$2,000.00 pursuant to the agreement. Claimant contended that she and Respondent signed this Separation Agreement, whereby it offered and she agreed to accept a \$2,000.00 payment in consideration of the termination of her employment, due to an asset purchase transaction by PaineWebber, Inc. Claimant further contended that she agreed to give up certain rights in exchange for the payment. Claimant alleged that she has made unsuccessful attempts to obtain the payment, and as a result of Respondent's wrongdoing, she has suffered a loss for which it should be liable.

Respondent Kidder, Peabody & Co., Inc., through its representative and in-house counsel, Sheila A. Chervin, Esq., maintained that it required employees to sign a Separation Agreement and Release as one of the conditions precedent to receipt of the year-end bonus. Respondent further maintained that this year-end discretionary bonus was denominated a "Special Payment", and that the discretionary bonus has always been paid only to individuals who are employed by the firm on the date on which the bonuses are paid to all qualified employees of the firm for the year in issue. Respondent further contended that the employees know that if they want to collect their bonus, they must remain employed by the firm until the bonus date. Respondent asserted that Claimant was not employed by it on the day on which the bonuses were paid and was not entitled to it. Respondent further asserted that, although the agreement is silent on the manner of payment of the bonus, the customary and usual policy of the firm and the industry was not waived merely because the agreement did not speak to it. Respondent maintained that it has entertained a firm, good faith belief that pursuant to custom and practice in the industry, firm policy, and the law, Claimant is not entitled to a 1994 performance year bonus.

RELIEF REQUESTED

Claimant Patricia Doxzen, requested \$2,000.00 in actual damages, plus treble damages, interest, attorney's fees and other costs.

Respondent Kidder, Peabody & Co., Inc., requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 10 of the NASD, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, Arthur Salzberg, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Patricia Doxzen on September 15, 1995 and by the Respondent Kidder, Peabody & Co., Inc., on January 2, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

Respondent Kidder, Peabody & Co., Inc., is liable and shall pay to Claimant Patricia Doxzen, \$2,000.00 in actual damages.

Respondent Kidder, Peabody & Co., Inc., is liable and shall pay to Claimant Patricia Doxzen, simple interest at the rate of 6% per annum from March 1, 1995 until the date of payment of the award.

3. The Claimant's request for treble damages is denied.
4. The parties shall bear their respective costs.
5. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

STATE OF

DISTRICT OF COLUMBIA

} SS:

COUNTY OF

I, Arthur J. SALZBERG

, do hereby affirm upon my oath as arbitrator that I am
the individual described herein and who executed this instrument, which is my oath and award.

Arthur J. Salzberg
Signature of Arbitrator

DATE OF DECISION: March 29, 1996