

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimants

Hobe Cie, Ltd  
Robert Hobe

95-06001

Name of Respondents

Kidder, Peabody & Co., Incorporated  
James P. Dolan, Jr.

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**REPRESENTATION**

For claimants Hobe Cie, Ltd. ("HCL") and Robert Hobe ("Hobe") appeared their representative Kevin Conway, Esq. of the law firm of Conway & Conway located in New York, New York.

For respondents Kidder Peabody & Co., Inc. ("Kidder") and James Dolan, Jr. ("Dolan") appeared their representative Brian McDonough of the law firm of Shanley & Fisher located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed: December 26, 1995.

Claimants' Submission Agreements signed on: December 14, 1995.

Joint Statement of Answer filed by respondents on: February 29, 1996.

Respondent Kidder's Submission Agreement signed on: October 14, 1996.

Respondent Dolan did not file a properly notarized Submission Agreement.

**HEARING INFORMATION**

Hearing Dates/Sessions:	February 24, 1997	-	one session
	April 24, 1997	-	one session
	April 25, 1997	-	two sessions

May 1, 1997	-	two sessions
May 2, 1997	-	two sessions
May 27, 1997	-	one session
Total		nine sessions

The hearings were conducted at the offices of the National Association of Securities Dealers Regulation, Inc. located at 125 Broad Street, New York, New York.

### CASE SUMMARY

Claimants alleged that at the time this matter was filed, Hobe was a retired business living in Florida. Claimants further alleged that they maintained an account with respondents with Hobe having previously had an account with Dolan at another broker-dealer. Claimants also alleged that during the course of Hobe's investing with Dolan it was understood that he was an unsophisticated investor who relied upon Dolan's recommendations. Claimants contended that around 1988, Dolan began changing his investment recommendations suggesting they purchase 25 units of Cinema Plus explaining that it was absolutely safe with income and a guaranteed return of principal. Claimants further contended, in fact, this investment was high risk, speculative and illiquid and carried excessive, up front commissions and pay-outs. Claimants also contended that they relied on Dolan's advice and purchased the units. Claimants asserted that Dolan induced them to purchase more units and that the actual value of the units was concealed on the monthly accounts statements.

Claimant Hobe alleged that Dolan induced him to purchase shares of Blackstone Strategic Term Trust, Inc. and Black Rock North American Government Income Trust by misrepresenting the risk profile as safe. Claimants further alleged that these investments were also risky and unsuitable.

Respondents maintained that Hobe is a sophisticated multimillionaire businessman who kept in continuous contact with Dolan and was fully informed about the activities in his accounts. Respondents further maintained that claimants are cherry-picking two investments although there were dozens of investments made over several years covering a host of different types of securities. Respondents also maintained that Cinema Plus was an income limited partnership offered during the late 1980's to offer to investors an alternative source of income in the face of declining interest rates. Respondents contended that limited partnerships were the accepted solution for fixed income investors. Respondents further contended that Hobe has received three years of payments and that the limited partnership stands ready to pay the principal when and if called upon to do so. Respondents also contended that claimants acknowledged that they understood the risks of the investment in writing. Respondents asserted that despite a decline in value, claimants purchased more units demonstrating their acceptance of the associated risks.

Respondents maintained that claimants invested in Blackrock North American Government Income Trust ("BNA") to take advantage of a high monthly income derived from the yield spread between U.S. and Canadian Treasury and GNMA markets. Respondents further maintained that Dolan investigated that investment fully and had many discussions with Hobe before the investment decision was made. Respondents also maintained that Hobe chose to switch to a higher yielding Blackrock investment but that it was not as profitable as was hoped for because of a decline in the Canadian dollar. Respondents contended that this issue was discussed with Hobe who decided to hold the investment.

### **RELIEF REQUESTED**

Claimants requested rescission of the unsuitable transactions, compensatory damages, pre and post judgment interest, treble damages, costs, expenses, reasonable attorney's fees, punitive damages and such other relief as the arbitrators find appropriate.

Respondents requested that the claims be dismissed in their entirety.

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

The arbitration panel made the following rulings concerning respondent Dolan who did not file a Submission Agreement in this matter:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that respondent Dolan was an associated person of a NASD member firm at the time this controversy arose. Consequently, the panel found personal jurisdiction over respondent Dolan pursuant to Rule 10301 of the Code.
3. In view of (2) above, the panel found that respondent Dolan was required to file with NASD Regulation a properly executed Submission Agreement pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon respondent Dolan, pursuant to Rule 10314(a) of the Code.

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 originals remain on file with NASD Regulation.

**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) The claims of claimants Robert Hobe and Hobe Cie, Ltd against respondents James P. Dolan, Jr. and Kidder Peabody & Co, Inc. be and hereby are dismissed in their entirety.
- 2) The parties shall bear their respective costs and attorney's fees.
- 3) All other relief requests are denied.

**FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation shall retain the \$200.00 non-refundable filing fee previously deposited by claimants and have assessed the following forum fees:

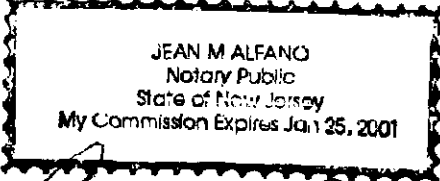
Nine sessions x \$750.00	= \$6,750.00
minus claimants' \$750.00 deposit	= <u>\$ 750.00</u>
total outstanding	= \$6,000.00

Claimants Robert Hobe and Hobe Cie, Ltd be and hereby are jointly and severally liable for the sum of \$3,375.00 representing one-half of the total amount of forum fees assessed. Claimants previously deposited \$750.00 with NASD Regulation. Therefore, claimants shall pay \$2,625.00 in satisfaction of outstanding forum fees.

Respondent Kidder Peabody be and hereby is liable for the sum of \$3,375.00 representing one-half of the total amount of forum fees assessed. Therefore, respondent Kidder Peabody shall pay to NASD Regulation \$3,375.00 in satisfaction of outstanding forum fees.

ARBITRATORS' SIGNATURES

I, Cynthia Plishtin, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



*Cynthia Plishtin*  
Cynthia Plishtin  
Public Chairperson

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 19<sup>th</sup> DAY OF June 1997

BY Cynthia Plishtin

Jean M. Alfano  
NOTARY PUBLIC

I, Martin L. Feinberg, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Martin L. Feinberg, Esq.  
Public Arbitrator

I, Frank Irizarry, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Frank Irizarry, Esq.  
Industry Arbitrator

Date of Decision: June 30, 1997

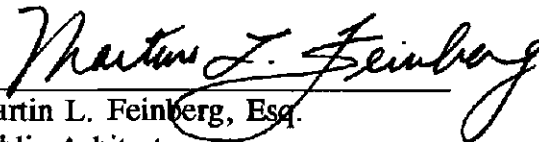
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Cynthia Plishtin  
Public Chairperson

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Martin L. Feinberg, Esq.  
Public Arbitrator

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Frank Irizarry, Esq.  
Industry Arbitrator

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Frank Irizarry, Esq.  
Industry Arbitrator

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