

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Bernard and Estelle Oliner

96-00229

Name of Respondent(s)

Kidder Peabody, Inc.
Robert Chaiklin

REPRESENTATION

For Claimants Bernard and Estelle Oliner ("the Oliners"): David A. Coven, Esq. of the law office of David A. Coven, P.A., Ft. Lauderdale, FL.

For Respondents Kidder Peabody, Inc. ("Kidder") and Robert Chaiklin ("Chaiklin"): George O. Richardson, III, Esq. of Shanley & Fisher, New York, NY.

CASE INFORMATION

Statement of Claim filed: January 17, 1996. Claimants' Submission Agreement signed on: November 17, 1995.

Joint Statement of Answer filed by Respondents on: April 11, 1996. Respondent Kidder's Submission Agreement signed on: April 10, 1996 by Pamela Armstrong on behalf of Kidder. Respondent Chaiklin failed to sign a Submission Agreement as required by Rules 10301 and 10314 of the NASD Code of Arbitration Procedure (see "Other Issues").

HEARING INFORMATION

On January 30 and 31, 1997 in Ft. Lauderdale, Florida hearings lasting three sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondent Chaiklin was liable for negligence; breach of fiduciary duty; common law fraud; and, violation of Florida Statute 517. Claimants further alleged that Respondent Kidder was liable for: negligent supervision; breach of fiduciary duty; violation of

Florida Statute 517; and, for the fraudulent activity of the account executive under the theory of respondeat superior.

Claimants maintained that they specifically instructed Chaiklin to preserve their capital and invest only in conservative income producing investments. Claimants next maintained that Chaiklin advised Claimants to sell their investments in Franklin High Yield Fund and Franklin Insured Tax Free Fund which had been generating an excellent return and then engaged in a pattern of buying and selling securities at a rate and pace designed to maximize commission income while disregarding Claimants' investment objectives.

Respondents denied all allegations of wrongdoing and alleged that the Statement of Claim failed to set forth with specificity the conduct that Claimants alleged was improper; Claimants never expressed dissatisfaction with the investments prior to filing this arbitration; Claimants actually made money on their investments; Claimants were experienced investors who understood their investments; and, any losses suffered by Claimants were a result of the general down-turn in the bond market in 1994 and not the result of any unsuitable recommendations by Respondents.

RELIEF REQUESTED

Claimants requested damages in the amount of \$53,000.00 plus lost income, interest, costs, attorney's fees and punitive damages.

Respondents requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

1. 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(s) remain on file with the NASD.
2. The panel finds that Respondent Chaiklin was required to sign a Submission Agreement pursuant to Rules 10301 and 10314 of the NASD Code of Arbitration Procedure since Chaiklin was a person associated with an NASD member firm at the time the facts giving rise to the controversy occurred.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found not liable and, therefore, the claims against them are hereby dismissed.
2. Claimants' requests for lost income, interest, costs, attorney's fees and punitive damages are denied.

OTHER COSTS

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure the panel has assessed forum fees in the amount of \$1,500.00 (three sessions x \$500.00 per session).

1. Claimants are hereby assessed \$1,500.00 for which the NASD shall retain the \$500.00 previously deposited by Claimants in partial satisfaction thereof, leaving a balance due to the NASD of \$1,000.00.
2. The NASD shall retain the \$150.00 non-refundable filing fee previously paid by Claimants to the NASD.
3. The NASD shall refund to Respondent Kidder the \$200.00 postponement fee previously paid by Kidder for the postponement request which was denied.

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

Concurring Arbitrators' Signatures
Name

/s/
Arthur J. Leibell, Esq.

Public/Industry

Public/Chairman

/s/
William W. Welch

Public

/s/
John Sciaudone

Industry

Date of Decision: February 12, 1997