

## **AWARD**

### **NASD Regulation, Inc. Office of Dispute Resolution**

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In the Matter of Arbitration Between

Lucille Gidseg,

Claimant,

and

No. 96-03154

Kidder, Peabody & Co., Inc. and

Albert M. Krohn, Jr.

Respondents.

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#### **REPRESENTATION OF PARTIES**

Claimant, Lucille Gidseg, was represented by Rozanne Moore McKinney, Esquire of McKinney & McKinney, P.C., located in Fairfield, Texas.

Respondents, Kidder, Peabody & Co., Inc. and Albert M. Krohn, Jr. ("Krohn,") were represented by Brian F. McDonough, Esquire of Shanley & Fisher, located in New York, New York.

#### **CASE INFORMATION**

Claimant, Lucille Gidseg's Statement of Claim was filed on or about: September 13, 1996.

Claimant, Lucille Gidseg's Submission Agreement was signed on: September 13, 1996.

Respondents', Kidder, Peabody & Co., Inc.'s and Albert M. Krohn, Jr.'s Statement of Answer was filed on or about: September 13, 1996.

Respondent, Kidder Peabody & Co., Inc.'s Submission Agreement was executed by Richard Kelly, Vice President/ Associate General Counsel on September 13, 1996.

Respondent, Albert M. Krohn, Jr.'s Submission Agreement was signed on: September 13, 1996.

#### **HEARING INFORMATION**

The hearing was held on November 3, 1997 for two (2) sessions in Houston, Texas.

### CASE SUMMARY

Lucille Gidseg ("Claimant") alleged that as a widowed 73 year old retired homemaker, unsophisticated in securities investing, she wished to invest in conservative, low-risk securities for retirement income, but that her broker, Albert M. Krohn, Jr. ("Krohn") invested a large portion of both her Personal Account and IRA Rollover Account at Kidder, Peabody & Co., Inc. ("Kidder") in a high-risk international mutual fund. Claimant asserted that Krohn was a friend who attended family events and confided his personal problems in her over the years. Claimant asserted that Krohn, as Claimant's broker at Kidder in the early 1990's, began to over-concentrate placement of Claimant's funds into one speculative mutual fund, Alliance Short-Term Multi-Market Trust-A ("the Fund.") Claimants stated that approximately seventy-six percent (76%) of Claimant's IRA Rollover Account was invested in the Fund as of February 1, 1995 and approximately eighteen percent (18%) of her Personal Account was invested in the Fund at that time as well. Claimant said that although she specifically instructed Krohn not to continue investing her money into the Fund, Krohn continued to do so. Claimant also said that despite her repeated requests for information, she was not timely informed by Kidder or Krohn as to when certain distributions had to be made from her IRA Rollover Account. As such, Claimant asserted that she not only lost \$30,322.00 due to the over-concentration of her money in the Fund, but also approximately \$10,000 in extra federal income tax for the year 1994 due to Kidder and Krohn's failure to timely answer her questions regarding her IRA Rollover Account. Claimant alleged that Kidder's and Krohn's actions with respect to her account constituted: fraud; unauthorized trading; unsuitable trading; fiduciary fraud and breach of fiduciary duty; misrepresentation of inherent risks or failing to disclose such risks in connection to the Fund; violations of the 1934 Securities Exchange Act, Texas Blue Sky Act, the Texas Deceptive Trade Practices Act and the NASD Rules of Fair Practice; as well as Kidder's failure to supervise Krohn.

Kidder, Peabody & Co., Inc. and Albert M. Krohn, Jr. (together, "Respondents.") denied any wrongdoing with respect to Claimant's account at Kidder. First, Respondents denied that Claimant was an unsophisticated investor as she directed both her own account as well as those of her daughters. Respondents also pointed to the Claimant's transfer of her account to go with Krohn first from Underwood Neuhaus to Donaldson Lufkin & Jenrette, then from there to Kidder, Peabody & Co., Inc., and that she first purchased the fund while Krohn was at Donaldson Lufkin & Jenrette. Second, Respondents denied that the Fund was a speculative, high-risk fund and denied that it was an unsuitable investment even though the combination of 1994's worst bond market in decades, and the Fund's investment in the Mexican peso, which was devalued considerably on December 20, 1994 caused the Fund's value to drop precipitously. Respondents asserted that as per the direction of Claimant and her daughter, on December 31, 1994, the Claimant's IRA account had an asset allocation of twenty-six percent (26%) invested in equities and seventy-four percent (74%) invested in various fixed income and fixed income mutual funds. Third, Respondents stated that they neither made any material misrepresentations, nor that they acted with *scienter* or the intent to deceive, manipulate, or defraud the Claimant. Fourth, Respondents stated that Claimant's allegation of tax losses was factually incorrect, in that Krohn always referred all of Claimant's tax questions to

Claimant's professional tax advisor, Rose Rose, with whom he spoke in his past dealings with Claimant. Fifth, Respondents alleged that no fiduciary relationship existed between Claimant and Respondent Krohn or Kidder based on their solely broker-customer relationship. Finally, Respondents asserted that Claimant's damages were not properly asserted. Respondents stated that Claimant was entitled to neither actual "out-of-pocket" losses nor the ten percent (10%) interest on those losses. Respondents also denied their liability for attorneys' fees merely as a proposed loser in a case, and denied the availability of punitive damages in this matter, as Respondents said that his behavior was not reprehensible, and at worst, he had selected a mutual fund which, after four years, did not perform as expected.

### **RELIEF REQUESTED**

Claimant, Lucille Gidseg, requested an award for: \$40,000.00 in actual damages and additional actual damages representing a reasonable rate of return on her account; the interest rate of ten percent (10%) per annum; \$50,000.00 in punitive damages; along with attorneys' fees in the greater amount of \$20,000.00 or one-third ( $\frac{1}{3}$ ) of damages; and expert costs of \$5,000.00.

Respondents, Kidder Peabody & Co., Inc. and Albert M. Krohn, Jr., requested that the claims asserted against them be dismissed in their entirety.

### **OTHER ISSUES CONSIDERED AND DECIDED**

At the beginning of the arbitration hearing in this matter, the third arbitrator withdrew from the panel due to the disclosure of and a potential conflict with Claimant's expert witness. Under § 10313 of the Code of Arbitration Procedure ("the Code"), the parties agreed on the record to proceed with the hearing with a two-person panel.

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 Regulation, Inc. Office of Dispute Resolution.

### **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 Statement of Claim filed by Lucille Gidseg against Kidder Peabody & Co., Inc. and Albert M. Krohn, Jr. is denied in its entirety and dismissed with prejudice.

2. With the exception of forum fees addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied in their entirety and dismissed with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$500.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were two (2) hearing sessions x \$500.00 = \$1,000.00 in forum fees. Pursuant to § 10332(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 § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee of \$150.00 and shall **retain** as forum fees the hearing session deposit of \$500.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Lucille Gidseg. Respondents, Kidder Peabody & Co., Inc. and Albert M. Krohn, Jr. are jointly and severally liable for half of the forum fees in this matter and shall pay the sum of \$500.00 to NASD Regulation, Inc., Office of Dispute Resolution.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge of \$300.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Kidder Peabody & Co., Inc.

**Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Concurring Arbitrators' Signatures

Franklin Anthony Arnold, Esquire  
Franklin Anthony Arnold, Esquire  
Chairperson  
Public Arbitrator

November 26, 1997  
Dated:

Nathan Levy  
Nathan Levy  
Panelist  
Industry Arbitrator

November 24, 1997  
Dated:

For NASD use only:  
Date Award was served on the parties: December 9, 1997