

AMERICAN STOCK EXCHANGE
IN THE MATTER OF ARBITRATION BETWEEN

CASE: PHILLIP E. HANDIN V. KIDDER, PEABODY & CO., INC.

97-07

DATE FILED: 11/30/95 FIRST SCHEDULED: 7/29/96 DECIDED: 8/12/97

CASE SUMMARY: Customer v. Member small claim limited partnership dispute
involving Polaris Aircraft Income Fund V and Fund VI. Respondent
has defended that the limited partnerships were suitable, and
claims should be barred.

CLAIMANT'S INITIALS: _____ RESPONDENT'S: _____ THIRD PARTY'S INITIALS _____

SESSIONS: Decision based on the pleadings.

CLAIM AND AWARD DATA:

CLAIM: \$10,000.00 3rd PTY: N/A AWARD: Denied

PUNITIVE: N/A PUNITIVE: N/A PUNITIVE: N/A

ATTY FEES: Requested ATTY FEES: Requested ATTY FEES: Denied

DEPOSIT: \$500.00 DEPOSIT: N/A DEPOSIT: \$500.00

COSTS: N/A COSTS: _____ COSTS: \$250.00

DECISION: The undersigned arbitrators have decided and determined in full and final settlement of all claims between the parties that:

See attached award.

ATTORNEY: Frederick Keitel, Esq. - Representing Claimant - Private Practice -

Palm Beach, Florida.

Karen Gould, Esq. - Representing Respondent - Hertz, Schram & Saretsky
Bloomfield Hills, Michigan.

ARBITRATORS

JOHN P. KELLY, ESQ., SOLE ARBITRATOR

see attached.

SIGNATURE

SIGNATURE

SIGNATURE

CITY: PALO ALTO

STATE: CALIFORNIA

DATE: 8/15/97

Additional pages may be attached.
(Dissents)

THE AMERICAN STOCK EXCHANGE

86 Trinity Place
New York, NY 10006-1881

In the Matter of Arbitration Between

PHILLIP E. HANDIN,

Claimant,

and

KIDDER, PEABODY & CO, INC.,

Respondent.

DECISION IN THE MATTER OF
ARBITRATION BETWEEN
PHILLIP E. HANDIN, CLAIMANT
AND KIDDER, PEABODY & CO.,
INC., RESPONDENT

The undersigned Arbitrator having read and considered the entire contents of this file specifically including Claimant's Opening and Final Brief, Respondent's Submission in Opposition to Claim and Claimant's Reply Memorandum to Respondent's Submission in Opposition to Claim, hereby renders the following decision pursuant to the rules of the American Stock Exchange:

REPRESENTATION OF PARTIES

Of Claimant: Frederick J. Keitel, III - Keitel & Keitel, P.O. Box 3243, Palm Beach, Florida 33480

Of Respondent: Karen A. Gould - Hertz, Schram & Saretsky, P.C., 1760 S. Telegraph Road, Suite 300, Bloomfield Hills, Michigan 48302-0183

SUMMARY OF FACTS

Claimant Phillip E. Handin ("Phillip") is the son of Edward Handin ("Edward") and Bertha K. Handin ("Bertha").

In December of 1989, Edward invested \$11,500 in Polaris Aircraft Income Fund V ("Polaris V"). In August of 1990 Edward invested \$2,500 in Polaris Aircraft Income Fund VI ("Polaris VI"). Edward purchased both these investments through Respondent Kidder, Peabody & Co., Inc. ("Kidder") and a Kidder Account Executive, Mr. Patrick Sahli ("Sahli"). Bertha and Edward are now deceased and this claim is made by Phillip.

After Edward acquired these limited partnerships, Polaris V and Polaris VI, the dividend payments from the limited partnerships were reduced and Claimant alleges that the value of Polaris V and Polaris VI greatly decreased and that there was no secondary market in which to liquidate these investments. Claimants further alleges that the investments were risky, speculative and illiquid and that these facts were concealed from Edward and Bertha. Additionally, Claimant urges that Respondent's concealment and non-disclosure regarding

the inherent unsuitability and riskiness of these investments constituted a fraud upon Edward and Bertha.

Claimant further alleges that Kidder made no efforts to appropriately supervise Sahli (their Account Executive) because Kidder supervision would have revealed that these investments were not suitable for Edward's investment objectives.

Respondent denies that there were any misrepresentations, fraudulent concealment or inappropriate supervision regarding Polaris V or Polaris VI sales to Edward. Respondent alleges that the Handins met all Kidder's internal suitability requirements, received very comprehensive prospectuses and invested in the Polaris V and VI limited partnerships with full knowledge of the risks inherent in these investments.

ISSUES PRESENTED

1. Are these claims barred by any applicable statute of limitations?
2. Is this claim ineligible for arbitration under AMEX Rule 605?
3. Did Respondents engage in any fraud or misrepresentation which caused Claimants damage?
4. Did Respondent breach any contractual obligations to Claimant?
5. Did Respondent breach any fiduciary duty to Claimant?
6. Did Respondent act in a negligent manner towards Claimant?
7. Did Respondent provide sufficient supervision and control over Sahli?

RELIEF REQUESTED

Claimant is seeking full rescission of the Polaris transactions, compensatory and actual damages, punitive damages, attorneys' fees, costs of arbitration and pre- and post-judgment interest on the compensatory damages, together with such other relief as is deemed appropriate under the circumstances by the Arbitrator.

DECISION

1. The Arbitrator believes that the applicable statute of limitation is four years under §343 of the California Code of Civil Procedure.

The Arbitrator further finds that although California law applies a three year statute for fraud – the intertwining of various causes of action require a uniform four year standard to be applied. The Arbitrator further finds the allegation by Claimant that January 19, 1994 was the first time that Claimant knew or should have known of the alleged fraud is reasonable and requires that these claims not be barred by any applicable statute of limitations.

2. The Arbitrator further finds that this claim is eligible for arbitration under AMEX Rule 605. This is because the six year eligibility rule is tolled by allegations of fraudulent concealment.

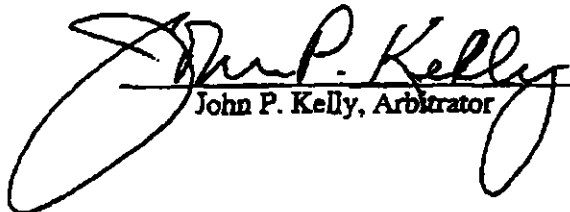
3. The Arbitrator finds that the Respondent did not engage in any fraud or misrepresentations which caused damage to Claimant. The Arbitrator finds that Sahli acted appropriately at all relevant times and recommended investments he believed to be suitable in light of Edward and Bertha's stated investment objectives. The Arbitrator finds no convincing evidence that Sahli misstated any material facts and does not believe that Kidder fraudulently concealed any material fact. The Arbitrator further finds that the Prospectuses involved fully and totally disclosed the inherent risk of these investments. The Arbitrator further finds that any damage which accrued to Claimants was the result of market forces and not attributable to any fraud or misrepresentation on the part of Respondents.
4. The Arbitrator does not believe that the Respondents breached any contractual obligation to the Claimants. The Arbitrator finds that while Edwards level of experience in this type of investment was limited, he was nevertheless generally aware of the nature and risks of the investment and sufficiently sophisticated to determine whether he should or should not make the investments. The Prospectuses were available to be read and certainly placed a reasonable investor on notice of the potential risks of the investments.
5. The Arbitrator finds that there was no breach of any fiduciary duty of care, loyalty or fair dealing. Respondents recommended these investments to Edward but the ultimate decision to make the investments was Edward's and it was his own decision to ultimately purchase the investments.
6. The Arbitrator finds that there was no negligence in Respondent's handling of these investments.
7. The Arbitrator finds that Kidder provided adequate supervision of Mr. Sahli.

FINAL DECISION

Because the Arbitrator believes that Edward understood the general risks of both investments and because Edward's investment experience and financial condition supported his investment activity and because Edward relied on his own expertise as well as Sahli's and because Kidder provided adequate supervision and control over Sahli in these transactions --

IT IS HEREBY ORDERED THAT ALL CLAIMS AGAINST RESPONDENTS ARE DENIED. EACH PARTY SHALL BEAR HIS OWN ATTORNEYS' FEES AND ALL OTHER COSTS EXCEPT THAT THE COST OF THE ARBITRATION (\$500.00) SHALL BE DIVIDED EQUALLY BETWEEN BOTH PARTIES. RESPONDENT SHALL SEND \$250.00 TO CLAIMANT AS CLAIMANT HAS EARLIER POSTED A \$500.00 FEE.

Date Aug. 12, 1997


John P. Kelly, Arbitrator