

NASD REGULATION, INC. AWARD

NASD Regulation, Inc., Office of Dispute Resolution

In the Matter of the Arbitration BetweenName of Claimant

Robert E. Dickens

Case No. 98-00478

Name of Respondent

Kidder, Peabody & Co., Incorporated

REPRESENTATION

For Claimant: Tom Westbrook, C.F.A. of Westbrook, McGrath, Gibson & Orth, Norcross, Georgia.

For Respondant: Peter C. Salerno, Esq., Senior Vice President, Chief Litigation Group, Kidder Peabody & Co., Inc. ("Kidder").

CASE INFORMATION

Statement of Claim filed: February 6, 1998.

Claimant's Submission Agreement signed on: April 8, 1998.

Statement of Answer filed by Respondent on: September 14, 1998.

Respondent's Submission Agreement signed on: September 11, 1998.

HEARING INFORMATION

A pre-hearing conference was conducted with the Chairperson on September 8, 1998. Thereafter, the evidentiary hearing which lasted one session was conducted telephonically on October 6, 1998.

CASE SUMMARY

Claimant Robert E. Dickens asserted a claim for the sum \$14,856.99, representing interest on a check sent to him by a limited partnership, KP/Miller Realty Growth Fund I, on May 10, 1988 and allegedly never received by him until late 1997, when the partnership discovered that the check had never been cashed, notified Mr. Dickens, and arranged for a replacement check to be sent. Claimant asserted that

he was entitled to interest on the distribution not received from the date of the distribution to the date of the Award.

Kidder requested that the claim be denied in its entirety and alleged the following: First, Kidder, Peabody & Co. Incorporated is not an entity that had any responsibility for either the original distribution, the delay in notifying Claimant that his check had not been cashed, or the replacement of it. Second, assuming Claimant had brought this claim against the proper party, the partnership, Claimant or his accountants, who were receiving his regular distributions, were negligent in not noticing the missing check at the time it should have been received, in 1988, and the partnership should not now have to pay because they were negligent.

RELIEF REQUESTED

Claimant requested damages in the sum of \$14,856.99.

Respondent requested a dismissal of all claims asserted against it.

OTHER ISSUES CONSIDERED & DECIDED

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 and post hearing submissions (if any), the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

All claims asserted by the Claimant against the Respondent are dismissed in all respects.

OTHER FEES

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent has paid to NASD Regulation, Inc. the \$400.00 member surcharge.

Pursuant to Rule 10332 of the Code of Arbitration Procedure, Claimant has paid to NASD Regulation, Inc. the \$100.00 claim filing fee.

FORUM FEES

Pursuant to Rule 10332c of the Code of Arbitration Procedure, forum fees in the sum of \$600.00 (one pre-hearing conference \$300.00 plus one session \$300.00) are assessed as follows:

Claimant is assessed the sum of \$300.00 less the \$300.00 on deposit in full satisfaction thereof.

Respondent is assessed the sum of \$300.00.

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

Name

Marion Smith
Marion Smith, II, Esq.

Public/Industry

Public

Date of Decision: 10/7/98