

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

David T. Shetterly, (Claimant) v. Bear Stearns Securities Corporation, Pentad Securities Inc. William R. Hoskyns, Fred A. Dietrich, James H. Wilson (Respondents).

Case Number: 00-03661

Hearing Site: Denver, Colorado

REPRESENTATION OF PARTIES

Claimant David Shetterly, ("Shetterly"): Joseph J. Zonies, Esq. , David Dansky, Esq. and Patrick Carrigan, Esq., Chambers Dansky & Zonies, P. C: Denver, Colorado.

Respondent, Bear Stearns Securities Inc. ("Bear Stearns"): Peter H. Walsh, Esq. and Andrew Shoemaker, Esq. , Hogan & Harson L.L. P: Denver, Colorado.

Respondent, Pentad Securities ("Pentad"): William R. Hoskyns, Pentad Securities, Inc., Sun City, Arizona.

Respondent, William R. Hoskyns ("Hoskyns") was *pro se*.

Respondent, Fred A. Dietrich, ("Dietrich") was *pro se*.

Respondent, James H. Wilson ("Wilson") was *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: September 28, 2000.

Claimant, Shetterly signed the Uniform Submission Agreement: August 21, 2000.

Statement of Claim filed on or about: September 28, 2000.

Claimant, Shetterly filed a Response to Pentad Securities, Inc., Hoskyns, Dietrich, and Wilson's Counterclaim on or about: September 28, 2000.

Claimant, Shetterly filed a Response to Bear Stearns' Counterclaim on or about April 13, 2001.

Respondent, Bear Stearns filed the Statement of Answer on or about: March 19, 2001.

Respondent Bear Stearns filed a Counterclaim on or about April 3, 2001.

The NASD has no record of Respondent, Bear Stearns' signed Uniform Submission

Agreement.

Respondents, Pentad Securities, Inc., Hoskyns, Dietrich, and Wilson jointly filed the Statement of Answer on or about November 20, 2000. Respondents Pentad Securities, Inc., Hoskyns, Dietrich, and Wilson jointly filed a Counterclaim on or about February 1, 2001. William R. Hoskyns, President of Pentad Securities signed the Uniform Submission Agreement on November 17, 2000.

Respondent Dietrich signed the Uniform Submission Agreement on November 17, 2000. Respondent, Wilson signed the Uniform Submission Agreement on November 10, 2000.

Respondents, Pentad Securities, Dietrich, Hoskyns, and Wilson filed an amended Statement of Answer and Counter Claim on or about February 15, 2001.

Claimant filed an answer to Counter Claim on or about February 28, 2001.

CASE SUMMARY

Claimant, Shetterly asserted the following causes of action: Defamation, Unjust Enrichment, Civil Conspiracy and Intentional Interference with Contract. The causes of action relate to Claimant Shetterly's employment relationship with Respondent Pentad Securities, Inc. and the other named Respondents.

Respondent, Bear Stearns denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimant fails to state a claim upon which relief can be granted; Claimant failed to mitigate his damages, if any; Because Respondent Bear Stearns' conduct towards Claimant was not a willful violation of law, Claimant is not entitled to exemplary damages; Claimant's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, laches and unclean hands; Claimant's reliance, if any, on any alleged commitment of the sort described in his claim was unreasonable as a matter of law; and Claimant's claims are barred, in whole or in part, by the applicable statute of limitations. Respondent, Bear Stearns asserted a Counterclaim for attorneys' fees and costs of defending this action.

Respondents, Pentad Securities, Hoskyns, Dietrich, and Wilson denied the allegations set forth in the Statement of Claim and asked that all claims against them be dismissed as they were not supported by the facts of the matter. Respondents, Pentad Securities, Hoskyns, Dietrich, and Wilson asserted a Counterclaim for attorneys' fees and costs of defending this action.

Claimant/Counter-Respondent, Shetterly denied the allegations set forth in the Counter Claims.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	unspecified
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondent, Bear Stearns requested that the panel dismiss the claim with prejudice and award Bear Stearns its costs and attorneys' fees and such other further relief as the panel deemed just and proper.

Respondents, Pentad Securities, Hoskyns, Dietrich, and Wilson requested that the panel dismiss the claim and award the Respondents their attorneys' fees and costs of defending this action.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Bear Stearns Securities Corp. did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the pre-hearings and post hearing are bound by the determination of the arbitration panel on all issues submitted.

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 the NASD Dispute Resolution, Inc. (the "NASD").

Respondent, Bear Stearns submitted a Motion to Dismiss/Motion for Summary Judgment on or about March 12, 2001. Claimant, Shetterly filed an Opposition to the Respondent Bear Stearns' Motion to Dismiss on or about March 30, 2001. After oral argument during a telephonic pre-hearing on May 29, 2001, the panel granted Respondent, Bear Stearns' Motion for Summary Judgment and dismissed with prejudice all claims by Claimants against Bear Stearns.

Respondent Bear Stearns withdrew its Motion to Amend Answer to Assert Counterclaim against Claimant David T. Shetterly on June 1, 2001. Therefore, Respondent, Bear Stearns did not appear at the arbitration hearing.

Respondents, Pentad Securities, Dietrich, Hoskyns and Wilson jointly filed a Motion to Dismiss on December 23, 2000. Claimant filed a response that the Respondents' Motion

to Dismiss on or about February 16, 2001. At the beginning of the hearing, Respondents, Pentad Securities, Hoskyns, Dietrich, Wilsons' Motion to Dismiss was denied by the undersigned panel.

Respondents, Pentad Securities, Dietrich, Wilson, and Hoskyns filed a Motion to Require Financial Performance Protection on April 6, 2001. Respondents requested Claimant to post a \$150,000 "performance bond" as security for amounts that may be awarded to Respondents at the conclusion of the arbitration. Claimant, Shetterly filed an opposition to Respondents' Motion to Require Financial Performance Protection on or about April 20, 2001. Respondents' Motion to require Claimant to secure "Performance Bond" was denied by the undersigned Panel on April 25, 2001.

Claimant filed a Motion for Videotaped Deposition Testimony on or about March 29, 2001. Respondent, Pentad Securities filed a Motion to deny the Videotaped Deposition Testimony on April 3, 2001. The undersigned panel granted the Claimant's Motion for Videotaped Deposition.

Respondent Bear Stearns submitted a Motion for Award of Costs and Fees on June 7, 2001. Claimant filed a response to the Motion on June 28, 2001. After the conclusion of the in person hearing on this matter in June, the panel determined a post-hearing, in person hearing on Bear Stearns' Motion for Attorneys' fees was warranted to properly and thoroughly consider the request. Post hearing documents on this issue were submitted and the post hearing was scheduled for September 20, 2001. Bear Stearns and all other parties except Hoskyns and Dietrich appeared at the post-hearing argument. After hearing, testimony and all arguments of counsel and reviewing the briefs submitted by counsel, the panel deliberated and made a determination on the Motion as set forth below. In its determination the panel awarded attorneys' fees against Claimant. The panel would have awarded the attorneys' fees against counsel for Claimant personally, but the Panel felt it was unclear that they had the authority to do so.

On September 17, 2001 attorney Martin Berliner, of the law firm of Berliner, Zisser Walter & Gallegos entered his appearance on behalf of Respondents Pentad Securities, Inc., William Hoskyns, Fred Dietrich and James Wilson. Pursuant to Rule 10329, these Respondents moved the panel to re-open the hearing of this matter. Counsel appeared at the in person post hearing arguments on September 20, 2001. At the close of the September 20, 2001 post-hearing, Respondents withdrew the Motion to reopen the hearing.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions and oral argument, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Pentad Securities, Inc. is liable for and shall pay to the Claimant David T. Shetterly, forty-seven thousand, six hundred and fifty dollars, (\$47,650) as compensatory damages.
2. Respondent, Pentad Securities Inc. is liable for and shall pay fifteen thousand dollars, (\$15,000) as attorneys' fees and costs. In making this award of attorneys' fees and costs the panel reviewed and considered all pleadings, motions, documents, evidence and testimony presented at hearing, and the oral arguments of counsel, and determined that authority exists for this award of attorneys' fees and costs.
3. Based upon Respondents' offer, Claimant shall have sixty days (60) from the date of receipt of this award to elect to assume the lease of premises at suite 220, 1445 Market Street. If Claimant so elects and if the landlord's approval is obtained, Pentad Securities Inc. shall transfer possession and all lease obligations to Claimant within 30 days of Claimant's election or upon such other terms as the parties may agree.
4. That Claimant David T. Shetterly is liable for and shall pay Bear Stearns Securities Corp. five thousand dollars (\$5,000) as attorneys' fees and costs. In making this award of attorneys fees and costs the panel reviewed and considered all pleadings, motions, documents, evidence and testimony presented at hearing and post hearing, and the oral arguments of counsel on the Motion for attorneys' fees and costs, and determined that authority exists for this award of attorneys' fees and costs.
5. Any outstanding Motions and/or Counter-Motions not specifically ruled upon are denied.
6. Except as otherwise specified herein, each party shall bear its own costs.
7. Any and all relief not specifically addressed herein, including punitive damages is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$250
Bear Stearns Counterclaim filing fee	= \$500
Pentad, Hoskyns, Dietrich, and Wilson's Counterclaim filing fee	= \$500

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is Bear Stearns Securities Incorporated and Pentad Securities, Inc.:

Member surcharge	= \$1,200
Pre-hearing process fee	= \$600
Hearing process fee	= \$2,000
Total Member Fees	= \$3,800

In this matter, the member firm is Pentad Securities Inc.

Member surcharge	= \$1,200
Pre-hearing process fee	= \$600
Hearing process fee	= \$2,000
Total Member Fees	= \$3,800

Forum Fees and Assessments

The panel has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel x \$1000	= \$3,000
Pre-hearing conferences:	
February 23, 2001	1 session
April 25, 2001	1 session
May 29, 2001	1 session
Seven (7) hearing sessions x \$1000	= \$ 7,000
Hearing Dates:	
June 4, 2001	2 sessions
June 5, 2001	3 sessions
June 6, 2001	2 sessions
One (1) in person post-hearing sessions x \$1000	= \$ 1,000
Hearing Dates:	

1 session

= \$11,000

The panel has assessed the forum fees between the Claimant, David T. Shetterly and Respondent, Pentad Securities Inc.

1. Claimant, David T. Shetterly is responsible for one-half (1/2) of the forum fees, five thousand five hundred dollars (\$5,500), incurred in this arbitration.
2. Respondent, Pentad Securities is responsible for one-half (1/2) of the forum fees, five thousand five hundred dollars (\$5,500) incurred in this arbitration.

Fee Summary

1. Claimant, Shetterly is solely liable for:

Initial Filing Fee	= \$ 250.00
Administrative costs (tape)	= \$ 15.00
<u>Forum Fees</u>	<u>= \$ 5,500.00</u>
Total Fees	= \$ 5,765.00
<u>Less payments</u>	<u>= \$ 1,250.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$4,515.00

2. Respondent, Bear Stearns Securities Corporation, be and hereby is solely liable for:

Counterclaim Fee	= \$ 500.00
<u>Member Fees</u>	= \$ 3,800.00
Total Fees	= \$ 4,300.00
<u>Less payments</u>	= \$ 3,800.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 500.00

3. Respondent, Pentad Securities Inc. be and hereby is solely liable for:

Member Fees	= \$3,800.00
Counterclaim Fee (for Pentad Respondents)	= \$ 500.00
<u>Forum Fees</u>	<u>= \$5,500.00</u>
Total Fees	= \$9,800.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,500.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Alan C. Friedberg, Esq.	-	Public Arbitrator, Presiding Chair
Edward F. Altman, Jr. .	-	Non-Public Arbitrator
Samuel R. Freeman, Esq.	-	Public Arbitrator

Concurring Arbitrators' Signatures

Alan C. Friedberg, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Edward F. Altman, Jr.
Non-Public Arbitrator

Signature Date

Samuel R. Freeman, Esq.
Public Arbitrator

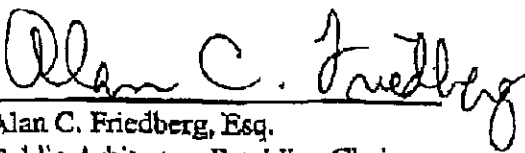
Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

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Public Arbitrator, Presiding Chair

10-11-01
Signature Date

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Signature Date

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Signature Date



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10-12-01

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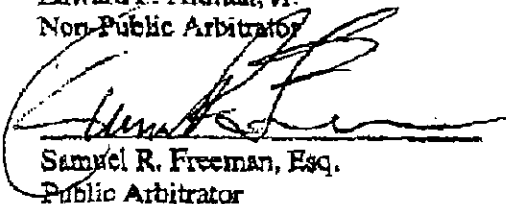
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