

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Judd E. Kemp and Judy S. Kemp v. Merit Capital Associates, Inc., Bear, Stearns Securities Corp.,
and Oliver Claude Ware III, Respondents

Case Number: 00-04224

Hearing Site: Salt Lake City, Utah

REPRESENTATION OF PARTIES

For Claimants:

James D. Gilson, Esq.
Callister Nebeker & McCullough
Salt Lake City, Utah

For Respondents

Bear, Stearns Securities Corp. &
Merit Capital Associates, Inc.:

William B. Federman, Esq.
Federman & Sherwood
Oklahoma City, Oklahoma

For Respondent Oliver Claude Ware III:

Mark J. Griffin, Esq.
Woodbury & Kesler, P.C.
Salt Lake City, Utah

CASE INFORMATION

Statement of Claim filed: September 18, 2000

Claimants' Uniform Submission Agreement signed: September 20, 2000

Statement of Answer filed by Respondent Bear, Stearns Securities Corp.: November 30, 2000

Statement of Answer filed by Respondent Oliver Claude Ware III: November 28, 2000

Statement of Answer filed by Respondent Merit Capital Associates, Inc.: November 8, 2000

Respondent Bear, Stearns Securities Corp.'s Uniform Submission Agreement signed: November 22, 2000

Respondent Oliver Claude Ware III's Uniform Submission Agreement signed: November 24, 2000

Respondent Merit Capital Associates, Inc.'s Uniform Submission Agreement signed: None filed

CASE SUMMARY

Claimant alleged breach of fiduciary duty, negligence, misrepresentation, conversion, violation of Section 10(b) and Rules 10b-5 and 10b-10 of the Securities Exchange Act of 1934, violation of NASD Rules 2110-2, Fair Dealing With Customers, and 2333(a), Improper use of Customer's Funds, violation of Utah Uniform Securities Act Sections 61-1-1, 61-1-2, 61-1-3, and 61-1-22 in the purchase and sale of Certified Diabetic shares in their brokerage account.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants requested compensatory damages of \$30,945.60, punitive damages of \$100,000.00, pre-judgment interest of 12% per annum, attorney's fees and costs.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On November 13, 2000, Respondent Joseph Charles & Associates, Inc. submitted notice of filing in United States Bankruptcy Court. Therefore, all matters concerning Respondent Joseph Charles & Associates, Inc. were indefinitely stayed.

Respondent Merit Capital Associates, Inc. did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On October 25, 2001, Claimants Judd E. Kemp and Judy S. Kemp filed a Motion to Amend Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(b). The Panel granted the motion on February 15, 2002.

On November 30, 2000, Respondent Bear, Stearns Securities Corp. filed a Motion to Dismiss Statement of Claim. The Panel withheld ruling on said motion and decided that the motion would be revisited after the close of the evidentiary hearing.

On September 24, 2002, the parties stipulated to the dismissal with prejudice of Respondent Oliver Claude Ware III.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a

handwritten, signed Award may be entered.

AWARD

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

- 1) Respondents Bear, Stearns Securities Corp. and Merit Capital Associates, Inc. are jointly and severally liable to and shall pay Claimants the sum of \$30,945.00 in compensatory damages.
- 2) Respondents Bear, Stearns Securities Corp. and Merit Capital Associates, Inc. are jointly and severally liable to and shall pay Claimants the sum of \$12,500.00 in pre-judgment interest and shall pay Claimants interest at a rate of 9% after the of this award on the principal balance of \$30,945.00 until the award is paid in full.
- 3) Respondents Bear, Stearns Securities Corp. and Merit Capital Associates, Inc. are jointly and severally liable to and shall pay Claimants the sum of \$15,000.00 in attorney's fees pursuant to contract and Utah Statute 78-27-56.5.
- 4) Respondents Bear, Stearns Securities Corp. and Merit Capital Associates, Inc. are jointly and severally liable to and shall pay Claimants \$300.00 to reimburse Claimants for the filing fee associated with this arbitration.
- 5) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly:

The member firm, Bear, Stearns Securities Corp. is a party and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-hearing Processing Fee	= \$ 600.00
<u>Hearing Processing Fee</u>	= \$2,500.00
Total Member Fees	= \$4,600.00

The member firm, Merit Capital Associates, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-hearing Processing Fee	= \$ 600.00
<u>Hearing Processing Fee</u>	= \$2,500.00
Total Member Fees	= \$4,600.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Arbitrator/Panel.

The following fees are assessed:

Seven (7) Pre-hearing conference sessions with the panel @ \$1,125.00/session	= \$ 7,875.00
Pre-hearing conference:	
April 24, 2001	1 session
May 1, 2001	1 session
October 8, 2001	1 session
November 26, 2001	1 session
February 15, 2002	1 session
April 26, 2002	1 session
September 19, 2002	1 session

Four (4) Hearing sessions @ \$1,125.00/session		= \$ 4,500.00
Hearing:	September 23, 2002	2 sessions
	September 24, 2002	2 sessions

Total Forum Fees	= \$12,375.00
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1. The Panel assessed the entire amount of the forum fees against the Respondents Bear, Stearns Securities Corp. and Merit Capital Associates, Inc. jointly and severally.

Fee Summary

1. Claimants are charged with the following fees and costs:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ (1,425.00)
Refund Due by NASD Dispute Resolution	= \$ (1,125.00)

2. Respondent Bear, Stearns Securities Corp. is charged with the following fees and costs:

<u>Member Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ (4,600.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Merit Capital Associates, Inc. is charged with the following fees and costs:

<u>Member Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ (3,225.00)
Balance Due NASD Dispute Resolution	= \$ 1,375.00

4. Respondents Bear, Stearns Securities Corp. and Merit Capital Associates, Inc. are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	= \$12,375.00
<u>Less payment by Bear, Stearns Securities Corp.</u>	= (1,111.00)
Balance Due NASD Dispute Resolution	= \$11,264.00

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

<i>Julian D. Jensen, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>William E. Winfield, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Stephen B. Ivey</i>	-	<i>Industry Arbitrator</i>

Concurring Arbitrators' Signatures



JULIAN D. JENSEN, ESQ.
Chair, Public Arbitrator

12/9/2012

Signature Date

WILLIAM E. WINFIELD, ESQ.
Public Arbitrator

Signature Date

STEPHEN B. IVEY
Industry Arbitrator

Signature Date

12/9/02

Date of Service

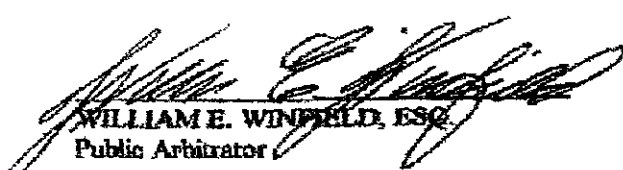
ARBITRATION PANEL

<i>Julian D. Jensen, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>William E. Winfield, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Stephen B. Ivey</i>	-	<i>Industry Arbitrator</i>

Concurring Arbitrators' Signatures

JULIAN D. JENSEN, ESQ.
Chair, Public Arbitrator

Signature Date



WILLIAM E. WINFIELD, ESQ.
Public Arbitrator

12/9/02

Signature Date

STEPHEN B. IVEY
Industry Arbitrator

Signature Date

12/9/02

Date of Service