

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Evelyn Mandelker, (Claimant) vs. Marvin Michael, Josephthal & Co., Inc. and Bear Stearns Securities Corp., (Respondents)

Case Number: 00-04515

Hearing Site: New York, NY

REPRESENTATION OF PARTIES

Claimant, Evelyn Mandelker ("Mandelker"), hereinafter referred to as "Claimant": Kevin P. Conway, Esq., Conway & Conway, New York, NY.

Respondents, Marvin Michael ("Michael"), Josephthal & Co., Inc. ("Josephthal"), and Bear Stearns Securities Corp. ("Bear Stearns") hereinafter collectively referred to as "Respondents": John Bersin, Esq., in-house counsel for Josephthal & Co., Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: October 11, 2000

Claimant Mandelker signed the Uniform Submission Agreement: October 10, 2000

Statement of Answer filed by Respondents Michael, and Josephthal on or about: December 4, 2000

Statement of Answer and Motion to Dismiss filed by Respondent Bear Stearns on or about: December 4, 2000

Respondent Michael signed the Uniform Submission Agreement: December 1, 2000

Respondent Josephthal signed the Uniform Submission Agreement: December 1, 2000

CASE SUMMARY

Claimant asserted the following causes of action: fraud, breach of contract, breach of fiduciary duty, conversion, negligence, failure to supervise, violation of securities rules, violation of section 349 of the New York General Business Law, and intentional infliction of emotional distress. These causes of action relate to the order execution of the corporate bonds Uniforet, Texfi, Worth Illinois and Envirodyne.

Unless specifically admitted in its Answer, Respondents Michael and Josephthal denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant assumed the risks of market fluctuation and as such is barred and estopped from recovery; doctrine of latches bars the claim; the Statement of Claim fails to plead fraud with the requisite particularity; Claimant has failed to properly compute the damages; and Claimant's

alleged losses are the result of unforeseen market fluctuations.

Unless specifically admitted in its Answer, Respondent Bear Stearns denied all allegations made in the Statement of Claim and asserted the following defenses: Claimant's Statement of Claim fails to state a cause of action upon which relief may be granted; Respondent acted in the limited capacity of clearing agent for Claimant's broker; any damages sustained are the direct result of conduct by parties other than Respondent; Claimant failed to exercise ordinary, reasonable and prudent conduct in the monitoring and supervision of her account; Claimant failed to mitigate the damages allegedly sustained; Respondent acted in good faith and in compliance with all securities laws, regulations and industry standards of conduct; and the claims asserted are barred by applicable statutes of limitation.

In their Motion to Dismiss, Respondent Bear Stearns asserts: Claimant's claims relate solely and exclusively to the alleged improper conduct of broker Michael and the obligations assumed by Josephthal pursuant to the terms of the clearance Agreement; Claimant's claims are unrelated to its functions as a clearance broker; Respondent undertook no duty at law or by agreement among the parties to supervise the conduct of Josephthal or its employees with respect to any transaction effected in Claimant's account; and Claimant does not assert that Respondent performed its role as clearing broker in a negligent manner.

RELIEF REQUESTED

Claimant requested: compensatory damages in the amount of \$60,000.00; damages for the intentional infliction of emotional distress; pre and post judgement interest; costs and expenses; and such other and further relief as the arbitrator deems appropriate.

Respondents Michael and Josephthal requested: all claims made in the Statement of Claim be denied; all costs and expenses be assessed against Claimant; and all such other and further relief as this Panel may deem just and necessary.

Respondent Bear Stearns requested: that all claims asserted against it be dismissed and that the cost of the proceeding be assessed against the claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Bear Stearns was dismissed as a party in this arbitration.

At the commencement of the hearing on August 23, 2001, the parties agreed to proceed with one arbitrator. The Panel consented to the parties' request.

Respondent Bear Stearns did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the

Code and, having answered the claim, is bound by the determination of the Arbitrator 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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Josephthal and Michael are hereby jointly and severally liable and shall pay to the Claimant \$48,452.08 in compensatory damages.
2. All other relief requests are hereby 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	= \$750.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the event giving rise to the dispute. In this matter, the member firms are parties.

Respondent Josephthal:

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

Respondent Bear Stearns:

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00

Forum Fees and Assessments

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00

Pre-hearing conference: June 8, 2001 1 session

One (1) Pre-hearing session with Panel x \$750.00 = \$ 750.00

Pre-hearing conference: May 23, 2001 1 session

Four (4) Hearing sessions with a single arbitrator x \$450.00 = \$1,800.00

Hearing Date(s): August 31, 2001 2 sessions

August 24, 2001 2 sessions

Two (2) Hearing sessions with Panel x \$750.00 = \$1,500.00

Hearing Dates(s): August 23, 2001 2 sessions

Total Forum Fees = \$4,500.00

1. The Arbitrator has assessed \$2,250.00 of the forum fees against Claimant Mandelker.
2. The Arbitrator has assessed \$2,250.00 of the forum fees against Respondent Josephthal.

Fee Summary

1. Claimant Mandelker be and hereby is solely liable for:

Initial Filing Fee = \$ 225.00

Forum Fees = \$2,250.00

Total Fees = \$2,475.00

Less payments = \$ 975.00

Balance Due NASD Dispute Resolution, Inc. = \$1,500.00

2. Respondent Josephthal be and hereby is solely liable for:

Member Fees = \$3,100.00

Forum Fees = \$2,250.00

Total Fees = \$5,350.00

Less payments = \$3,100.00

Balance Due NASD Dispute Resolution, Inc. = \$2,250.00

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3. Respondent Bear Stearns be and hereby is solely liable for:

<u>Member Fees</u>	= \$1,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,600.00

All balances are due and payable to NASD Dispute Resolution, Inc.

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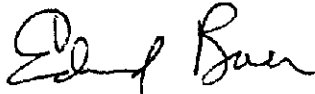
ARBITRATION PANEL

Edward Baer

Public Arbitrator, Chairperson

Arbitrator's Signature

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Edward Baer
Public Arbitrator, Chairperson

Signature Date

November 13, 2001

Date of Service (For NASD office use only)

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