

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Trade Advertising, Inc., (Claimant) vs. Adolph Komorsky Inc., Peter Adolph, and Bear Stearns Securities Corp., (Respondents)

Case Number: 00-04547

Hearing Site: Boston, Massachusetts

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**REPRESENTATION OF PARTIES**

Claimant, Trade Advertising, Inc., hereinafter referred to as "Claimant": David E. Neitlich, Esq., Attorney at Law, Boston, MA.

Respondents, Adolph Komorsky Inc. ("AKI") and Peter Adolph ("Adolph"): Richard A. Roth, Esq., Littman, Krooks & Roth, P.C., New York, NY.

Respondent, Bear Stearns Securities Corp. ("BSSC"): Scott C. Gladstone, Esq., Ruberto, Israel & Weiner, P.C., Boston, MA. Previously represented by: Katherine C. Ash, Esq., Managing Director, Legal Department, Bear, Stearns & Co. Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: October 10, 2000.

Opposition to Motion to Dismiss filed by Claimant on or about: July 27, 2001.

Supplement to Opposition to Motion to Dismiss filed by Claimant on or about: October 29, 2001.

Reply to Counterclaim and Motion to Dismiss filed by Claimant on or about: October 29, 2001.

Claimant signed the Uniform Submission Agreement: October 6, 2000.

Joint Statement of Answer filed by AKI and Adolph on or about: March 19, 2001.

Counterclaim filed by AKI on or about: March 19, 2001.

Motion to Dismiss filed by AKI and Adolph on or about: July 10, 2001.

AKI signed the Uniform Submission Agreement: March 19, 2001.

Adolph signed the Uniform Submission Agreement: March 19, 2001.

Statement of Answer and Motion to Dismiss filed by BSSC on or about: March 20, 2001.

BSSC signed the Uniform Submission Agreement: March 26, 2001.

### CASE SUMMARY

Claimant asserted the following causes of action: fraud; unfair and deceptive practices; unauthorized trades; improper retention of funds; and negligence. Claimant's claim involved the stocks of Onsale, Inc. and Books-A-Million, Inc.

Unless specifically admitted in their Answer, AKI and Adolph denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief may be granted; Claimant is not entitled to any award of attorneys' fees, claim filing fees, arbitration expenses, or any other fees or costs; Claimant is barred by one or more of the following doctrines: ratification, estoppel, waiver, and/or laches; Claimant is barred by the doctrine of unclean hands; Claimant is not entitled to pre-award or post-award interest; Claimant's damages, if any, are speculative; Claimant is precluded from recovery because the losses allegedly sustained by Claimant were a distinct and proximate result of Claimant's own conduct and/or negligence and not by any act or omission on the part of Respondents; Claimant is precluded from recovery because Claimant failed to take reasonable and prudent action in order to mitigate its losses; the facts in this case, as a matter of law, do not support a claim for punitive damages; Respondents acted in good faith and in compliance with all applicable rules and regulations; Respondents discharged their responsibilities in a professional and ethical manner, in good faith, and in accordance with the investment objectives expressed by Claimant; and Claimant's claims are barred by all applicable and governing securities statutes.

In its Counterclaim, AKI asserted the following causes of action: breach of contract; securities fraud; and abuse of process.

Unless specifically admitted in its Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: Claimant objects to and denies the jurisdiction of the NASD or the Panel to determine the issues contained in the Counterclaim, and Claimant brought this claim against Respondents as a result of Respondents' egregious conduct in this matter by intentionally depriving Claimant of its money and other assets.

Unless specifically admitted in its Answer, BSSC denied the allegations made in the Statement of Claim and asserted the following defenses: there is not a single allegation in the Statement of Claim that BSSC, the clearing broker for AKI during the relevant period, played any role whatsoever in the trades in question; BSSC, a clearing broker, owes no fiduciary duty to the customers of an introducing broker and has no duty to supervise the activities of an introducing broker or its employees; BSSC was entitled to act upon the instructions of the introducing broker, AKI, without inquiry or investigation; and a clearing broker cannot be expected to act as a judge to resolve disputes between introducing brokers and their customers.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$87,617.19, plus treble damages, interest from December 28, 1998, costs, and attorneys' fees.

During the hearings in this matter, the Panel allowed Claimant to make an amendment to the Statement of Claim increasing the amount of compensatory damages claimed to \$105,636.19.

AKI and Adolph requested dismissal of the Statement of Claim in its entirety, plus an award of their attorneys' fees, costs, and disbursements.

In its Counterclaim, AKI requested compensatory damages in the amount of \$15,900.00, plus interest, attorneys' fees and costs in the amount of \$40,000.00, punitive damages, and such other and further relief as the Panel deems just and proper.

During the hearings in this matter, the Panel allowed AKI to make a verbal amendment to the Counterclaim increasing the amount of attorneys' fees and costs requested to approximately \$100,000.00.

In its Reply, Claimant requested that the Counterclaim be dismissed, and that Claimant be awarded its costs and attorneys' fees.

BSSC requested that the Panel dismiss Claimant's claims against it, and award BSSC its attorneys' fees and costs, together with such other and further relief as is just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed in their entirety.

2. Claimant is liable for and shall pay to AKI the sum of \$50,000.00 as attorneys' fees.
3. AKI's requests for compensatory and punitive damages are hereby denied.
4. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 300.00
Counterclaim filing fee	= \$ 750.00

#### **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 person at the time of the events giving rise to the dispute. In this matter, Adolph Komorsky Inc. and Bear Stearns Securities Corp. are parties.

#### **Adolph Komorsky Inc.**

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

#### **Bear Stearns Securities Corp.**

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

May 1 & 2, 2002, adjournment by Claimant	= WAIVED
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**Forum Fees and Assessments**

The Panel assesses 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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00		= \$2,250.00
Pre-hearing conferences:	October 24, 2001	1 session
	January 11, 2002	1 session
Four (4) Hearing sessions x \$1,125.00		= \$4,500.00
Hearing Dates:	September 12, 2002	2 sessions
	September 13, 2002	2 sessions
<hr/> Total Forum Fees		= \$6,750.00

1. The Panel has assessed all of the forum fees against Claimant.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$6,750.00
Total Fees	= \$7,050.00
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$5,625.00

2. AKI is solely liable for:

Counterclaim Filing Fee	= \$ 750.00
<u>Member Fees</u>	= \$4,600.00
Total Fees	= \$5,350.00
<u>Less payments</u>	= \$6,050.00
Refund Due AKI	= \$ 700.00

3. BSSC is solely liable for:

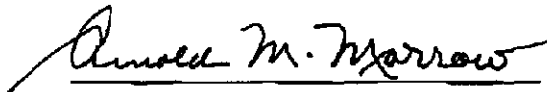
<u>Member Fees</u>	= \$4,600.00
<u>Total Fees</u>	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Arnold M. Marrow, Esq.	-	Public Arbitrator, Presiding Chair
Nancy E. Watters, Esq.	-	Public Arbitrator
Richard Lee Rotnem	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Arnold M. Marrow, Esq.  
Public Arbitrator, Presiding Chair

SEPTEMBER 26, 2002  
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Signature Date

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Nancy E. Watters, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Richard Lee Rotnem  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

October 2, 2002  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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Public Arbitrator, Presiding Chair

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Signature Date

  
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Nancy E. Watters, Esq.  
Public Arbitrator

9/24/02  
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Signature Date

\_\_\_\_\_  
Richard Lee Rotnem  
Non-Public Arbitrator

\_\_\_\_\_  
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Public Arbitrator, Presiding Chair

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Signature Date

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Nancy E. Watters, Esq.  
Public Arbitrator

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Signature Date



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Richard Lee Rotnem  
Non-Public Arbitrator



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Signature Date

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