

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 01-00710

Vilma Thomas

Name of the Respondents

Hearing Site: Philadelphia, Pennsylvania

Bear Stearns Securities, Corp,  
Kennister Daley, Claudette Burgess-Gay, and  
Joseph Visconti

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REPRESENTATION OF PARTIES

Claimant Vilma Thomas, hereinafter referred to as "Claimant" was represented at the hearing by Orville McKenzie, Esq., McKenzie & Associates, PLLC, Ft. Lauderdale, Florida.

Respondent Bear Stearns Securities, Corp. ("Bear Stearns") was represented at the hearing by Joseph E. Gasperetti, Esq., Law Offices of Joseph E. Gasperetti, New York, New York.

Respondent Claudette Burgess-Gay ("Burgess-Gay") was not represented by counsel.

Respondent Kennister Daley ("Daley") was represented at the hearing by James A. Prestiano, Law Offices of James A. Prestiano, New York, New York.

Respondent Joseph C. Visconti was initially represented by Laura Anthony, LEA,PA, West Palm Beach, Florida. Ms. Anthony ceased participating in this matter when she withdrew as counsel for Respondent Daley on August 10, 2001 and thereafter Respondent Visconti was not represented by counsel.

CASE INFORMATION

Statement of Claim filed on February 8, 2001.

Claimant signed the Uniform Submission Agreement on March 27, 2001.

Statement of Answer filed by Respondent Bear Stearns on or about June 8, 2001.

Respondent Bear Stearns did not file an Uniform Submission Agreement.

Statement of Answer filed by Respondent Burgess-Gay on or about June 8, 2001.

Respondent Burgess-Gay signed the Uniform Submission Agreement on June 7, 2001.

Statement of Answer filed by Respondent Daley on or about July 5, 2001.

Respondent Daley signed the Uniform Submission Agreement on August 5, 2001.

Statement of Answer filed by Respondent Visconti on or about August 23, 2001.

Respondent Visconti did not file an Uniform Submission Agreement.

Claimant filed a first Motion to Amend Statement of Claim.

Respondent Bear Stearns's Motion to Dismiss was filed on or about June 8, 2001.

Respondent Burgess-Gay first Motion to Amend Answer was filed on or about October 30, 2001.

Claimant's first Motion to Postpone Hearing was filed on or about March 13, 2002.

Claimant's second Motion to Amend Statement of Claim was filed on or about April 15, 2002.

Respondent Burgess-Gay second Motion to Amend Answer was filed on or about May 16, 2002.

Claimant's second Motion to Postpone Hearing was filed on or about September 11, 2002.

#### CASE SUMMARY

Claimant asserted the following causes of action, among others: violation of industry standards; violation of Florida Statutes Section 517; breach of contract; breach of fiduciary duty; common law fraud; negligence; and, failure to supervise. The causes of action relate to the alleged mismanagement of Claimant's account, including but not limited to, transactions relating to her Citicorp stock.

Unless specifically admitted in its Answer, Respondent Bear Stearns denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's claims are barred by Claimant's agreement with Respondent Bear Stearns and as a matter of law.

Unless specifically admitted in her Answer, Respondent Burgess-Gay denied the allegations made in the Statement of Claim and asserted the following defenses: Respondent Burgess-Gay was not Respondent Daley's supervisor and at no time made investment decisions regarding Claimant's account.

Unless specifically admitted in his Answer, Respondent Daley denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; statute of limitations; laches; Claimant was fully advised of and understood the nature, characteristics, risks, and fees associated with her account; Claimant was aware of all transactions; contributory negligence; assumption of risk; Respondent Daley acted in good faith and exercised reasonable diligence; waiver and estoppel; ratification; and, failure to mitigate.

Unless specifically admitted in his Answer, Respondent Visconti denied the allegations made in

the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; statute of limitations; laches; Claimant was fully advised of and understood the nature, characteristics, risks, and fees associated with her account; Claimant was aware of all transactions; contributory negligence; assumption of risk; Respondent Visconti acted in good faith and exercised reasonable diligence; waiver and estoppel; ratification; and, failure to mitigate.

#### RELIEF REQUESTED

Claimant in her Statement of Claim requested:

Compensatory Damages	\$ 50,000.00
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondent Bear Stearns in its Statement of Answer requested that Claimant's claims be dismissed.

Respondent Burgess-Gay in her Statement of Answer requested that she be removed from this matter.

Respondent Daley in his Statement of Answer requested that the matter be dismissed with prejudice and that the matter be expunged from his CRD record.

Respondent Visconti in his Statement of Answer requested that the matter be dismissed with prejudice and that the matter be expunged from his CRD record.

#### OTHER ISSUES CONSIDERED AND DECIDED

Respondent Visconti was not present or represented at the May 28, 29, and 30, 2002 hearing sessions on this matter. Respondent Visconti participated in September 24, 2002 hearing session via telephone conference.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned Panel determined that Respondent Visconti has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Daley was present at the May 28, 29, and 30, 2002 hearing sessions. Prior to the final hearing session, Respondent Daley filed for Bankruptcy and therefore this matter is stayed as to him.

Respondent Bear Stearns was present at the May 28, 29, and 30, 2002 hearing sessions, but settled with the Claimant prior to the final hearing session and therefore did not attend the September 24, 2002 hearing session.

Respondents Bear Stearns and Visconti did not file with NASD Dispute Resolution, a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and having answered the claim, are bound by the determination of the Panel on all issues submitted.

Claimant's first Motion to Amend Statement of Claim was denied on January 17, 2002.

Respondent Bear Stearns's Motion to Dismiss was denied on January 25, 2002.

Claimant filed a Motion to Postpone the hearing scheduled for April 9-11, 2002 because he had retained new counsel. The Panel granted said motion on March 25, 2002.

Claimant filed her second Motion to Amend Statement of Claim to amend factual allegations in the Statement of Claim. The Panel denied said motion on May 17, 2002.

Claimant filed her second Motion to Postpone the hearing session schedule for September 24, 2002 because her counsel was unexpectedly unavailable. The motion was denied on September 19, 2002. The Panel allowed counsel for Claimant to present Claimant's closing argument via telephone conference.

Respondent Burgess-Gay filed her first Motion to Amend her Answer on October 30, 2002. Said motion was granted on December 5, 2001. Respondent Burgess-Gay included a deficient Counterclaim in her Amended Answer. Respondent Burgess-Gay represented to the NASD Dispute Resolution staff that she would refile her Amended Answer with a Motion to Dismiss instead of a Counterclaim. On May 16, 2002, Respondent Burgess-Gay filed her second Motion to Amend Answer, together with her Amended Answer that included a Motion to Dismiss and Request for Expungement. On May 22, 2002, the Panel denied Respondent Burgess-Gay second Motion to Amend Answer together with the Motion to Dismiss and Request for Expungement contained in her Amended Answer.

#### 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. Respondent Visconti is assessed and shall pay to Claimant compensatory damages in the amount of \$12,000.00;
2. All claims against Respondent Burgess-Gay are denied in their entirety;

3. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### 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 = \$ 175.00

#### 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(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Bear Stearns is a party.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 1,000.00
Total Member Fees	= \$ 2,400.00

#### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

April 9-11, 2002 adjournment by Claimant = \$ 600.00

#### Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 @ \$ 600.00 = \$ 1,200.00

Pre-hearing conferences:	November 19, 2001	1 session
	January 25, 2002	1 session

Seven (7) Hearing sessions @ \$600.00 = \$ 4,200.00

Hearing Dates:	May 28, 2002	2 sessions
	May 29, 2002	2 sessions
	May 30, 2002	2 sessions
	September 24, 2002	1 session

Total Forum Fees = \$ 5,200.00

1. The Panel has assessed \$2,700.00 of the forum fees to Claimant.
2. The Panel has assessed \$2,700.00 of the forum fees to Respondent Visconti.

SEE SUMMARY

1. Claimant is assessed the following fees:

Initial Filing Fee	= \$ 175.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 2,700.00
Total Fees	= \$ 3,475.00
Less payments	= \$ 775.00
Balance Due NASD Dispute Resolution	= \$ 2,700.00

2. Respondent Bear Stearns is assessed the following fees:

Member Fees	= \$ 2,400.00
Total Fees	= \$ 2,400.00
Less payments	= \$ 2,400.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondent Visconti is assessed the following fees:


Forum Fees	= \$ 2,700.00
Total Fees	= \$ 2,700.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,700.00

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

ARBITRATION PANEL

Thomas J. Beagan, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Allen Mark Kerpan, Esq.	-	Public Arbitrator, Panelist
Karr M. Fleisher	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

  
Thomas J. Beagan, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

10-30-02  
Signature Date

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Allen Mark Kerpan, Esq.  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Harr M. Fleisher  
Non-Public Arbitrator, Panelist

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

October 1 November 5, 2002  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Thomas J. Beagan, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

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

  
Allen Mark Kerpan, Esq.  
Public Arbitrator, Panelist

10/30/02  
Signature Date

\_\_\_\_\_  
Karr M. Fleisher  
Non-Public Arbitrator, Panelist

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

November 5 2002  
Date of Service (For NASD Dispute Resolution of: use only)