

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Daryl and Elizabeth Roecker

and

01-03357
Overland Park, Kansas

Name of Respondents

Bear Stearns & Co., Inc.
Darryl A. Lindsey

REPRESENTATION OF PARTIES

Daryl and Elizabeth Roecker ("**Claimants**") were represented by Diane A. Nygaard, Esq. and Robin R. LaFollette, Esq. The Nygaard Law Firm, Kansas City, Missouri.

Bear Stearns & Co., Inc. ("**Respondent Bear Stearns**") and Darryl A. Lindsey ("**Respondent Lindsey**") were represented by James K. Langdon, II, Esq., Dorsey & Whitney LLP, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about June 25, 2001. Submission Agreement of Claimants Daryl and Elizabeth Roecker was signed on May 15, 2001.

Answer and Motion to Dismiss was filed by Respondents Bear Stearns & Co., Inc. and Darryl A. Lindsey on or about August 16, 2001. Submission Agreement of Respondent Bear Stearns & Co., Inc. was signed on August 14, 2001 by Mark E. Lehman. Submission Agreement of Respondent Darryl A. Lindsey was signed on August 14, 2001.

CASE SUMMARY

Claimants submitted the following summary:

Claimants alleged that their account representative, Respondent Darryl Lindsey, mismanaged Claimants' discretionary account and breached his fiduciary duty to Claimants by concentrating and excessively trading their account in speculative technology stocks. Claimants further alleged that Respondents ignored Claimants' instructions to limit the use of margin in the account. Claimants alleged that Bear Stearns & Co., Inc., failed to supervise

Lindsey. Claimants set forth claims of negligence, fraud, breach of fiduciary duty, breach of contract, and violation the Missouri Securities Act and NASD Rules.

Respondents submitted the following summary:

Respondents deny any liability to Claimants and assert that Mr. Lindsey handled the account properly at all times. Mr. Lindsey made proper recommendations and, when he made discretionary investments, his decisions were within the authority Claimants granted him and were prudent given Claimants' investment objectives and the portion of their assets invested through Bear Stearns. The use of margin in the account was appropriate and, in any event, ratified by Claimants. Finally, there were no misrepresentations and there was no fraud of any kind (including churning). Claimants' losses were caused not by Mr. Lindsey's alleged wrongdoing or by Bear Stearns' alleged failure to supervise but instead by the unforeseen and unforeseeable collapse of the market, particularly the technology sector, beginning in the fall of 2000.

RELIEF REQUESTED

Claimants requested an award as follows:

- For actual damages in the amount of \$93,000 plus interest at the rate of 15% per annum; such amount to be determined based upon the proof of specific damages presented before the arbitrator;
- For all commissions, fees and expenses paid to Respondents incident to both accounts;
- For all of their costs, expenses and disbursements, including reasonable attorneys' fees, in pursuing this arbitration proceeding;
- For such other relief as the arbitration panel deems just and proper; and
- For punitive damages of \$180,000.

At the hearing, Claimants requested an award against the Respondents of actual damages in the amount of \$109,000 plus costs, attorney's fees and interest at the rate of 8%, pursuant to the Missouri Securities Act. Claimants further sought an award of punitive damages against Respondent Bear Stearns of three times actual damages.

Respondents requested that the Statement of Claim be dismissed in its entirety and that the costs of the proceeding be assessed against Claimants. Respondent Lindsey further requested that all references to this matter be expunged from his CRD record.

OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive

conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Bear Stearns & Co., Inc. and Darryl A. Lindsey shall be and hereby are jointly and severally liable for and shall pay to Claimants Daryl and Elizabeth Roecker the sum of \$35,000.00 (**Thirty Five Thousand Dollars and no Cents**) representing disgorgement of a portion of brokerage commissions and margin interest paid by Claimants for breach of fiduciary duty.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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 = \$300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Bear Stearns & Co., Inc.

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

Forum Fees and Assessments

The Arbitration Panel 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(s) with a single arbitrator x \$450.00	= \$450.00
Pre-hearing conference(s): February 27, 2002 1 session	
Two (2) Pre-hearing session(s) with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conference(s): December 20, 2001 1 session	
May 20, 2002 1 session	
Five (5) Hearing sessions x \$1,125.00	= \$5,625.00
Hearing Date(s): June 17, 2002 2 sessions	
June 18, 2002 3 sessions	
Total Forum Fees	= \$8,325.00

The Arbitration Panel has assessed \$8,325.00 of the forum fees jointly and severally to Bear Stearns & Co., Inc. and Darryl A. Lindsey.

Fee Summary

Claimants Daryl and Elizabeth Roecker, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
Balance to be refunded by NASD Dispute Resolution, Inc.	= \$1,125.00

Respondent, Bear Stearns & Co., Inc., shall be and hereby is liable for:

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

NASD Dispute Resolution, Inc.

Arbitration No. 01-03357

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Respondents, Bear Stearns & Co., Inc. and Darryl A. Lindsey shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$8,325.00
Balance Due NASD Dispute Resolution, Inc.	= \$8,325.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Murray S. Levin, Esq. - Public Arbitrator, Presiding Chair

Mark D. Wasserstrom, Esq. - Public Arbitrator

Joseph M. Rebein, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Murray S. Levin
Murray S. Levin, Esq.
Public Arbitrator, Presiding Chair

July 3, 2002
Signature Date

/s/ Mark D. Wasserstrom
Mark D. Wasserstrom, Esq.
Public Arbitrator

July 29, 2002
Signature Date

/s/ Joseph M. Rebein
Joseph M. Rebein, Esq.
Non-Public Arbitrator

July 8, 2002
Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 01-03357
Award Page 5 of 5

Respondents, Bear Stearns & Co., Inc. and Darryl A. Lindsey shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$8,325.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$8,325.00

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ARBITRATION PANEL

Murray S. Levin, Esq. - Public Arbitrator, Presiding Chair
Mark D. Wasserstrom, Esq. - Public Arbitrator
Joseph M. Rebein, Esq. - Non-Public Arbitrator

Concurring Arbitrators:



Murray S. Levin, Esq.
Public Arbitrator, Presiding Chair

7/3/02
Signature Date

Mark D. Wasserstrom, Esq.
Public Arbitrator

Signature Date

Joseph M. Rebein, Esq.
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 01-03357
Award Page 5 of 5

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ARBITRATION PANEL

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Mark D. Wasserstrom, Esq. - Public Arbitrator

Joseph M. Rebein, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Murray S. Levin, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Mark D. Wasserstrom
Mark D. Wasserstrom, Esq.
Public Arbitrator

7/29/02
Signature Date

Joseph M. Rebein, Esq.
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 01-03357
Award Page 5 of 5

Respondents, Bear Stearns & Co., Inc. and Darryl A. Lindsey shall be and hereby are jointly and severally liable for:

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Balance Due NASD Dispute Resolution, Inc.	= \$8,325.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Murray S. Levin, Esq. - Public Arbitrator, Presiding Chair
Mark D. Wasserstrom, Esq. - Public Arbitrator
Joseph M. Rebein, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Murray S. Levin, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Mark D. Wasserstrom, Esq.
Public Arbitrator

Signature Date



Joseph M. Rebein, Esq.
Non-Public Arbitrator

7/08/2002
Signature Date