

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Den-Mat Corporation, Robert L. Ibsen and Noreen Freitas as trustees of the Ibsen Portfolio Trust, Robert L. Ibsen and Marcia M. Ibsen as trustees of the Ibsen Family Revocable Trust, Robert L. Ibsen, an individual, Cathy Reed (Kellogg), an individual, and Elizabeth Karleskint, an individual, Claimants v. Bear Stearns & Co., Inc., Peter S. Zyhalo, Respondents

Case Number: 01-05985

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimants:

E. Thomas Moroney, Esq.
Law Offices of E. Thomas
Moroney
Torrance, California

For Respondents:

Michael M. Gless, Esq.
Keesal Young & Logan
Long Beach, California

CASE INFORMATION

Statement of Claim filed: November 1, 2001

Amended Statement of Claim filed: June 18, 2002

Claimant Den-Mat Corporation's Uniform Submission Agreement signed: December 5, 2001

Claimant Ibsen Portfolio Trust's Uniform Submission Agreement signed by trustee Noreen Freitas on June 7, 2002 and by trustee Robert L. Ibsen on June 12, 2002

Claimant Ibsen Family Revocable Trust's Uniform Submission Agreement signed by trustee Robert L. Ibsen on June 12, 2002 and by trustee Marcia M. Ibsen on June 14, 2002

Claimant Robert L. Ibsen's Uniform Submission Agreement signed: December 5, 2001

Claimant Cathy Reed (Kellogg's) Uniform Submission Agreement signed: December 4, 2001

Claimant Elizabeth Karleskint's Uniform Submission Agreement signed: December 5, 2001

Joint Statement of Answer filed by Respondents: January 9, 2002

Respondent Bear Stearns & Co., Inc.'s Uniform Submission Agreement signed: December 18, 2001

Respondent Peter S. Zyhailo's Uniform Submission Agreement signed: December 15, 2001

CASE SUMMARY

Claimants initial Statement of Claim alleged breach of contract, breach of fiduciary duty, negligence, failure to execute, failure to follow instructions, suitability, misrepresentation, omissions, and fraud. The allegations involved stocks in TheGlobe.com, Monsanto, MyPoints.com, Digital Island, Cumulus Media, NBC Internet, Globalstar Telecom, MyPoints.com, LSI Logic, International Fibercom, Celera Genomics, Conexant, Credence Systems, Novellus, AVX Corp., Trimble Navigation, McLeodUSA, and Mattson Technology.

Claimants' Amended Statement of Claim did not change the allegations set forth in the initial Statement of Claim.

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

RELIEF REQUESTED

Claimants' initial Statement of Claim requested \$2,000,000.00 in compensatory damages without specifying the amount request by each Claimant, unspecified punitive damages, and costs, including attorney's fees.

Claimants' Amended Statement of Claim requested \$3,813,000.00 in compensatory damages, as follows: Claimant Den-Mat Corporation requested \$2,100,00.00; Claimant the Ibsen Portfolio Trust requested \$475,000.00; Claimant the Ibsen Family Revocable Trust requested \$1,200,00.00; Claimant Cathy Reed (Kellogg) requested \$25,000; and, Claimant Elizabeth Karleskint requested \$13,000.00. In addition, Claimants requested unspecified punitive damages, and costs, including attorney's fees.

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

OTHER ISSUES CONSIDERED AND DECIDED

On or about June 18, 2002, the Parties filed a Stipulation to Amend the Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(b). During the hearing, the Panel granted the Amendment.

During the hearing, Respondent Peter Zyhailo, requested that the Panel recommend expungement of his CRD record. After due deliberation in the evidence, witnesses and testimony presented by the parties in this matter, the Panel denied the motion.

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

- 1) Respondents Bear Stearns & Co., Inc. and Peter S. Zyhailo are jointly and severally liable to and shall pay Claimant Den-Mat Corporation the sum of \$300,500.00 in compensatory damages.
- 2) Respondents Bear Stearns & Co., Inc. and Peter S. Zyhailo are jointly and severally liable to and shall pay Claimant the Ibsen Portfolio Trust the sum of \$54,825.00 in compensatory damages.
- 3) Respondents Bear Stearns & Co., Inc. and Peter S. Zyhailo are jointly and severally liable to and shall pay Claimant Ibsen Family Revocable Trust the sum of \$113,850.00 in compensatory damages.
- 4) Respondents Bear Stearns & Co., Inc. and Peter S. Zyhailo are jointly and severally liable to and shall pay Claimant Cathy Reed (Kellogg) the sum of \$5,280.00 in compensatory damages.
- 5) Respondents Bear Stearns & Co., Inc. and Peter S. Zyhailo are jointly and severally liable to and shall pay Claimant Elizabeth Karlskint the sum of \$545.00 in compensatory damages.
- 6) The parties shall bear their respective costs, including attorney's fees.
- 7) All other relief requested and 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	= \$ 600.00
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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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Bear Stearns & Co., Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 4,500.00</u>
Total Member Fees	= \$ 7,600.00

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 Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: June 21, 2002	1 session
Six (6) Hearing sessions @ \$1,200.00/session	= \$ 7,200.00
Hearings: December 9, 2002	2 sessions
December 10, 2002	2 sessions
December 11, 2002	2 sessions
Total Forum Fees	= \$ 8,400.00

The Panel assessed the entire balance of \$8,400.00 in forum fees to Respondent Bear Stearns & Co., Inc.

Fee Summary

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

Initial Filing Fee	= \$ 600.00
<u>Less payments by Den-Mat Corporation</u>	<u>= \$(1,800.00)</u>
Refund Due Den-Mat Corporation	= \$(1,200.00)

2. Respondent Bear Stearns & Co., Inc. is charged with the following fees and costs:

Member Fees	= \$ 7,600.00
<u>Forum Fees</u>	<u>= \$ 8,400.00</u>
Total Fees	= \$16,000.00
<u>Less payments</u>	<u>= \$(7,600.00)</u>
Balance Due NASD Dispute Resolution	= \$ 8,400.00

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>Mandel E. Himmelstein, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Thomas L. Flattery, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Robert H. Bothner</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Mandel E. Himmelstein, Esq.
Chair, Public Arbitrator

Signature Date

Thomas L. Flattery, Esq.
Public Arbitrator

Signature Date

Robert H. Bothner
Non-Public Arbitrator

Signature Date

Date of Service

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Chair, Public Arbitrator

12/20/02
Signature Date

Thomas L. Flattery, Esq.
Public Arbitrator

Signature Date

Robert H. Bothner
Non-Public Arbitrator

Signature Date

12-20-02
Date of Service

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Public Arbitrator

12/20/02

Signature Date

Robert H. Bothner
Non-Public Arbitrator

Signature Date

12-20-02

Date of Service

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Thomas L. Flattery, Esq.	-	Public Arbitrator
Robert H. Bothner	-	Non-Public Arbitrator

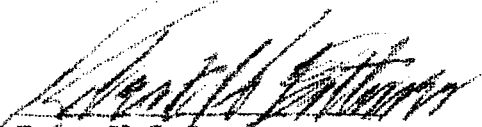
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Mandel E. Himmelstein, Esq.
Chair, Public Arbitrator

Signature Date

Thomas L. Flattery, Esq.
Public Arbitrator

Signature Date



Robert H. Bothner
Non-Public Arbitrator

12-19-02

Signature Date

12-20-02

Date of Service