

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Dwight C. Schaubach

Case Number: 02-05226

Name of the Respondent  
Bear Stearns & Co., Inc.

Hearing Site: Atlanta, Georgia

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Dwight C. Schaubach, hereinafter referred to as "Claimant": Steven J. Gard, Esq., Gard Smiley Bishop & Dovin LLP, Atlanta, Georgia.

For Bear Stearns & Co., Inc., hereinafter referred to as "Respondent": Paul W. Stivers, Esq., Jeffrey W. Willis, Esq. and John DaGrosa Smith, Esq., Rogers & Hardin, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: September 3, 2002.

Claimant signed the Uniform Submission Agreement: August 29, 2002.

Statement of Answer filed by Respondent on or about: November 25, 2002.

Amended Answer filed by Respondent on or about: January 21, 2003.

Respondent did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; common law fraud and deception; breach of NASD and NYSE rules and negligence; breach of contract; violation of Georgia's Blue Sky Act and Rules Promulgated Thereunder; and, control person liability and liability under general agency principles. The causes of action relate to Claimant's investments in unspecified technology stocks in his account.

Unless specifically admitted in its Answers, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested portfolio damages of \$2,000,000.00; commissions, markups, trading profits and margin interest of \$2,300,000.00; interest on Claimant's losses; punitive damages of \$6,000,000.00; and, attorneys' fees of \$6,180,000.00.

Respondent requested that the Statement of Claim be dismissed and that the costs of this

proceeding, including attorneys' fees and forum fees, be assessed against Claimant.

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

Respondent did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

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

There is no award. Claimant's claims are dismissed, with prejudice.

Each party shall bear their respective costs, including attorneys' fees.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are 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	= \$600.00
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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(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 a party.

Member surcharge	= \$3,750.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$5,500.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

December 8, 9, 10, 11 and 12, 2003 Hearing Dates, adjournment by Claimant= \$1,200.00 assessed to Claimant.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$900.00
Pre-hearing conferences: November 10, 2003 1 session	
September 15, 2004 1 session	
Three (3) Pre-hearing sessions with the Panel @ \$1,200.00	= \$3,600.00
Pre-hearing conferences: March 27, 2003 1 session	
November 21, 2003 1 session	
December 8, 2003 1 session	
Eighteen (18) Hearing sessions @ \$1,200.00	= \$21,600.00
Hearing Dates: September 27, 2004 2 sessions	
September 28, 2004 2 sessions	
September 29, 2004 2 sessions	
September 30, 2004 2 sessions	
October 1, 2004 2 sessions	
October 4, 2004 3 sessions	
October 5, 2004 3 sessions	
October 6, 2004 2 sessions	

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Total Forum Fees	= \$26,100.00
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The Panel has assessed \$5,220.00 of the forum fees to Claimant.

The Panel has assessed \$20,880.00 of the forum fees to Respondent.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**FEE SUMMARY**

Claimant is solely liable for:

Initial Filing Fee	= \$600.00
Adjournment Fee	= \$1,200.00
Forum Fees	= \$5,220.00

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Total Fees	= \$7,020.00
Less payments	= \$3,000.00

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Balance Due NASD Dispute Resolution	= \$4,020.00
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Respondent is solely liable for:

Member Fees	= \$10,000.00
Forum Fees	= \$20,880.00

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Total Fees	= \$30,880.00
Less payments	= \$10,000.00

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Balance Due NASD Dispute Resolution	= \$20,880.00
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All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

N. John Garcia	-	Public Arbitrator, Presiding Chair
Daniel E. Gulden, Esq.	-	Public Arbitrator
Perry Lee Taylor, Jr., Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
N. John Garcia  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/S/\_\_\_\_\_  
Daniel E. Gulden, Esq.  
Public Arbitrator

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

\_\_\_\_\_/S/\_\_\_\_\_  
Perry Lee Taylor, Jr., Esq.  
Non-Public Arbitrator

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

October 14, 2004  
Date of Service (For NASD Dispute Resolution office use only)

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Daniel E. Gulden, Esq.	-	Public Arbitrator
Perry Lee Taylor, Jr., Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
N. John Garcia  
Public Arbitrator, Presiding Chair

10/16/04  
Signature Date

\_\_\_\_\_  
Daniel E. Gulden, Esq.  
Public Arbitrator

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

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Daniel E. Gulden, Esq.	-	Public Arbitrator
Perry Lee Taylor, Jr., Esq.	-	Non-Public Arbitrator

### Concurring Arbitrators' Signatures

N. John Garcia  
Public Arbitrator, Presiding Chair

Signature Date



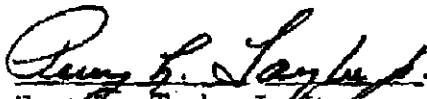
Daniel E. Gulden, Esq.  
Public Arbitrator

10/13/04

Signature Date

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Perry Lee Taylor, Jr., Esq.  
Non-Public Arbitrator

14 Oct 04  
Signature Date

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Date of Service (For NASD Dispute Resolution office use only)