

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Ilse Marcks,

Case Number: 02-06161

Claimant,

vs.

Bear, Stearns & Co., Inc.
and Mark Steven Gardner,

Hearing Site: Houston, Texas

Respondents.

Nature of Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimant Ilse Marcks, hereinafter referred to as "Claimant," was represented by Frank V. Ghiselli, Esq. and Winston E. Cochran, Jr., Esq. of Houston, Texas.

Respondents Bear, Stearns & Co., Inc. and Mark Steven Gardner, hereinafter referred to as "Respondents," were represented by John C. Allen, Esq. and Stephen W. Eubank, Esq. of Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about October 15, 2002.

The Claimant signed the Uniform Submission Agreement on October 10, 2002.

The Joint Statement of Answer was filed on or about December 16, 2002

Respondent Bear, Stearns & Co., Inc. signed the Uniform Submission Agreement on December 18, 2002.

The NASD has no record that Respondent Mark Steven Gardner signed the Uniform Submission Agreement.

CASE SUMMARY

This claim involved the sale and management of high risk stocks, including volatile technology stocks, that were allegedly unsuitable based on the advanced age of Claimant and her husband

and their stated investment objectives of income and preservation of capital. Claimant contended that she incurred both realized and unrealized losses in excess of \$96,000.00. In the Statement of Claim, Claimant asserted various claims, including: violations of the Deceptive Trade Practices Act; violations of Section 33 of the Texas Securities Act; negligence; breach of fiduciary duty; common law fraud; statutory fraud; and violations of Section 10(b) and Rule 10b-5.

Respondents denied all liability to Claimant in the Statement of Answer. Respondents contended that Claimant's losses were caused by an overall market decline, and not due to any misconduct of Respondents. Contrary to the Statement of Claim, Respondents alleged that Claimant was a knowledgeable investor with a net worth of \$600,000.00.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

Compensatory Damages:	\$196,495.00
Punitive Damages:	\$589,485.00
Attorneys' Fees:	Unspecified
Costs:	Unspecified
Interest:	Unspecified
Other:	Unspecified

OTHER ISSUES CONSIDERED AND DECIDED

The parties agree 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.

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

AWARD

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

1. Respondents Bear, Stearns & Co., Inc. and Mark Steven Gardner are jointly and severally liable for and shall pay to Claimant Ilse Marcks compensatory damages of \$92,500.00, plus interest on this amount at 10% per annum which shall begin to accrue 30 calendar days from the service date of this award and shall cease to accrue when the award is paid in full;

2. Respondents Bear, Stearns & Co., Inc. and Mark Steven Gardner are jointly and severally liable for and shall pay to Claimant Ilse Marcks expert witness fees in the amount of \$7,500.00;
3. Respondents Bear, Stearns & Co., Inc. and Mark Steven Gardner shall reimburse Claimant Ilse Marcks for the NASD filing fee in the amount of \$375.00;
4. The parties shall each bear their own attorney fees and other costs incurred in this matter;
5. Any and all relief not specifically granted herein, including punitive damages, is denied with prejudice.

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	= \$ 375.00
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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. Bear, Stearns & Co., Inc. is a member firm.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 with Panel @ \$1,200	= \$ 1,200.00
Pre-hearing conference: May 2, 2003 for one (1) session	

Four (4) hearing sessions with Panel @ \$1,200	= \$ 4,800.00
Hearing sessions: September 29, 2003 for two (2) sessions	
September 30, 2003 for two (2) sessions	

Total Forum Fees	= \$ 6,000.00
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1. The Panel has assessed all forum fees in the amount of \$6,000.00 to Respondents, jointly and severally.

Fee Summary

Claimant Ilse Marcks is liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 00.00
Total Fees	= \$ 375.00
Less payments	= \$ 1,575.00
Refund Due	= \$ 1,200.00

Respondent Bear, Stearns & Co., Inc. is liable for:

Member Fees	= \$ 7,000.00
Total Fees	= \$ 7,000.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 00.00

Respondents Bear, Stearns & Co., Inc. and Mark Steven Gardner are jointly and severally liable for:

Forum Fees	= \$ 6,000.00
Total Fees	= \$ 6,000.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 6,000.00

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

ARBITRATION PANEL

Donald K. Eckhardt, Esq.- Public Arbitrator, Presiding Chairperson

Frank M. Romano - Public Arbitrator

Thomas H. Griffin- Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

October 9, 2003

Donald K. Eckhardt, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

October 9, 2003

Frank M. Romano
Public Arbitrator

Signature Date

/s/

October 10, 2003

Thomas H. Griffin
Non-Public Arbitrator


Signature Date

October 14, 2003

Date of Service (For NASD Dispute Resolution use only)

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Concurring Arbitrators' Signatures


Donald K. Eckhardt, Esq.
Public Arbitrator, Presiding Chairperson

10/9/03
Signature Date

Frank M. Romano
Public Arbitrator

Signature Date

Thomas H. Griffin
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

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Concurring Arbitrators' Signatures

Donald K. Eckhardt, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Frank M. Romano
Frank M. Romano
Public Arbitrator

10/9/03
Signature Date

Thomas H. Griffin
Non-Public Arbitrator

Signature Date

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Fax to T. Saltzman

312-236-9239

Concurring Arbitrators' Signatures

Donald K. Eckhardt, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Frank M. Romano
Public Arbitrator

Signature Date



Thomas H. Griffin
Non-Public Arbitrator

10-10-03
Signature Date

Date of Service (For NASD Dispute Resolution use only)