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

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In the Matter of the Arbitration Between:

Names of the Claimants  
Dan R. Duncan and  
Neils Creek Property Co., Ltd

Case Number: 02-06354

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 Dan R. Duncan ("Duncan") and Neils Creek Property Co., Ltd, ("Neils") hereinafter collectively referred to as "Claimants": Steven J. Gard, Esq., Gard, Smiley, Bishop & Dovin, LLP, Atlanta, Georgia.

For Bear Stearns & Co., Inc., hereinafter referred to as "Respondent": Jeffery W. Willis, Esq., Rogers & Hardin, LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: October 23, 2002.

Claimants signed the Uniform Submission Agreement: October 17, 2002.

Statement of Answer filed by Respondent on or about: March 11, 2002.

Respondent signed the Uniform Submission Agreement: December 19, 2002.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; common law fraud; misrepresentation and negligent misrepresentation; breach of NASD and NYSE Rules; negligence; breach of contract; violation of Georgia's Blue Sky Law; violation of the Georgia Securities Act of 1973 and Rules promulgated thereunder; and, failure to supervise. The causes of action relate to the purchase and sale of unspecified securities in Claimants accounts.

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

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$1,640,000.00, commissions, mark ups, trading profits and margin interest in the amount of \$1,200,000.00, punitive damages in the amount of \$4,920,000.00, and attorneys' fees in the amount of \$5,173,333.00.

Respondent requested that the Statement of Claim be dismissed in its entirety and that the costs

of this proceeding, including attorneys' fees and forum fees, be assessed against Claimants.

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

On or about November 23, 2004, Claimants notified NASD Dispute Resolution that this matter had been settled.

On or about February 25, 2005, the parties submitted a joint motion requesting that the Panel recommend the expungement of this matter from non-parties Damion Peter Carufe and John Matthew Dwyer's NASD Central Registration Depository ("CRD") records.

On or about March 9, 2005, the Panel issued an order granting the parties' joint motion seeking to expunge all references to this matter from non-parties Damion Peter Carufe and John Matthew Dwyer's NASD CRD records.

Prior to the execution of the Stipulated Award, one of the public arbitrator's withdrew from the Panel. The parties have elected to proceed with the two remaining arbitrators.

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

### **AWARD**

After considering the pleadings, the record in this matter, without making a finding of fact or conclusion of law and solely upon the joint motion of the parties for entry of a Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel recommends the expungement of all references to the above captioned arbitration from non-parties Damion Peter Carufe and John Matthew Dwyer's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, non-parties Damion Peter Carufe and John Matthew Dwyer must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 |
|--------------------------|------------|

**Member Fees**

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

|                         |              |
|-------------------------|--------------|
| Member surcharge        | = \$3,350.00 |
| Pre-hearing process fee | = \$ 750.00  |
| Hearing process fee     | = \$5,500.00 |

**Adjournment Fees**

Adjournment granted during these proceedings for which fees were assessed:

|  |               |
|--|---------------|
| March 8-10, 2004 adjournment by Respondent | = \$ 1,200.00 |
|--|---------------|

The Panel has assessed \$600.00 of the adjournment fees jointly and severally to Claimants.  
The Panel has assessed \$600.00 of the adjournment fees to Respondent.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

**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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

|   |              |
|---|--------------|
| Four (4) Pre-hearing sessions with the Panel @ \$1,200.00 | = \$4,800.00 |
| Pre-hearing conferences:                                  |              |
| May 1, 2003   | 1 session    |
| September 15, 2003  | 1 session    |
| October 14, 2003  | 1 session    |
| February 11, 2004   | 1 session    |

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|                  |              |
|------------------|--------------|
| Total Forum Fees | = \$4,800.00 |
|------------------|--------------|

The Panel has assessed \$2,400.00 of the forum fees jointly and severally to Claimants.  
The Panel has assessed \$2,400.00 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**

Claimants are jointly and severally liable for:

|                                     |                      |
|-------------------------------------|----------------------|
| Initial Filing Fee                  | = \$ 600.00          |
| Adjournment Fee                     | = \$ 600.00          |
| <u>Forum Fees</u>                   | <u>= \$ 2,400.00</u> |
| Total Fees                          | = \$ 3,600.00        |
| <u>Less payments</u>                | <u>= \$ 1,800.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 1,800.00        |

Respondent is solely liable for:

|                                     |                       |
|-------------------------------------|-----------------------|
| Member Fees                         | = \$ 9,600.00         |
| Adjournment Fee                     | = \$ 600.00           |
| <u>Forum Fees</u>                   | <u>= \$ 2,400.00</u>  |
| Total Fees                          | = \$ 12,600.00        |
| <u>Less payments</u>                | <u>= \$ 11,100.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 1,500.00         |

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

**ARBITRATION PANEL**

|                         |   |                       |
|-------------------------|---|-----------------------|
| James G. Killough, Esq. | - | Public Arbitrator     |
| M. Bruce Adelberg       | - | Non-Public Arbitrator |

**Concurring Arbitrators' Signatures**

/s/

03/21/05

\_\_\_\_\_  
James G. Killough, Esq.  
Public Arbitrator

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

/s/

03/18/05

\_\_\_\_\_  
M. Bruce Adelberg  
Non-Public Arbitrator

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

03/21/2005

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

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**James C. Killough, Esq.**  
**Public Arbitrator**

**Signature Date**

**M. Bruce Adelberg**  
**Non-Public Arbitrator**

**Signature Date**

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

FROM :

MAR. 18. 2005 12:21PM NASD

Mar. 18 2005 05:20PM P1  
NO. 891 Y. 5

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Concurring Arbitrators' Signatures

James G. Killough, Esq.  
Public Arbitrator

Signature Date

M. Bruce Adelsberg  
M. Bruce Adelsberg  
Non-Public Arbitrator

3/18/05  
Signature Date

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