

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Robert and Darlene Stuart

Case Number: 03-06415

Names of the Respondents

Tradestation Securities, Inc.

Michael A. Klem

Bear Stearns Securities, Corp.

Hearing Site: Pittsburgh, Pennsylvania

Nature of the Dispute: Customers vs. Members and Associated Person.

REPRESENTATION OF PARTIES

Claimants Robert and Darlene Stuart, hereinafter collectively referred to as "Claimants", were represented by Michael J. Betts, Esq., Betts Law Offices, Pittsburgh, Pennsylvania.

Respondents, Tradestation Securities, Inc. ("Tradestation"), Michael A. Klem ("Klem"), and Bear Stearns Securities, Corp. ("Bear Stearns"), hereinafter collectively referred to as "Respondents", were represented at the hearing by Richard Jackson, Esq., Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., Miami, Florida.

CASE INFORMATION

Statement of Claim filed on September 4, 2003.

Claimants signed the Uniform Submission Agreement on September 3, 2003.

Statement of Answer and Affirmative Defenses filed by Respondents Tradestation and Klem on December 5, 2003.

Amended Statement of Answer and Affirmative Defenses filed by Respondents Tradestation and Klem on December 10, 2003.

A representative of Respondent Tradestation executed the Uniform Submission Agreement on December 4, 2003.

Respondent Klem signed the Uniform Submission Agreement on December 4, 2003.

Statement of Answer filed by Respondent Bear Stearns filed on December 19, 2003.

David Weintraub, Managing Director of Respondent Bear Stearns signed the Uniform Submission Agreement on December 18, 2003.

Respondents Tradestation and Klem filed a Motion to Dismiss on March 16, 2004.

Respondent Bear Stearns filed a Motion to Dismiss on March 22, 2004.

Claimants filed a Brief in Opposition to the Motions to Dismiss on April 5, 2004.

Respondent Bear Stearns filed a Reply Memorandum in Support of its Motion to Dismiss on March 18, 2004.

CASE SUMMARY

Claimants, in their Statement of Claim asserted the following causes of action, among others: violations of Federal Securities Laws including Section 10(b) of the Securities Exchange Act of 1934 and Rules 10b-5 and 10b-10 promulgated thereunder; violations of the Pennsylvania Securities Laws; violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Laws; churning; suitability; failure to utilize appropriate asset allocation; breach of fiduciary duties; common law fraud; breach of the duty of good faith and fair dealing; breach of contract; and failure to supervise. The causes of action relate to the purchase and sale of various unspecified securities

Unless specifically admitted in their Answer, Respondents Tradestation and Klem denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimants' claims are barred by the applicable statutes of limitations and by the doctrine of laches; waiver; estoppel; failure to mitigate damages; assumption of risk; ratification; Claimants failed to act with reasonable care and due diligence; and failure to state a cause of action.

Unless specifically admitted in their Answer, Respondent Bear Stearns denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimants' claims are barred by the applicable statutes of limitations and by the doctrine of laches; waiver; estoppel; failure to mitigate damages; assumption of risk; ratification; Claimants failed to act with reasonable care and due diligence; and failure to state a cause of action.

RELIEF REQUESTED

Claimants in their Statement of Claim requested compensatory damages in the amount of \$480,000.00, punitive damages, treble damages, interest, costs, and attorneys' fees.

Respondents Tradestation and Klem in their Statement of Answer requested that the Arbitration Panel (the "Panel") dismiss the Statement of Claim with prejudice, and that Respondent Tradestation recover the attorneys' fees and costs that they have incurred in connection with this action.

Respondent Bear Stearns in its Statement of Answer requested that the Panel dismiss the Statement of Claim with prejudice, and that it recover its attorneys' fees and costs which it have incurred in connection with this action.

OTHER ISSUES CONSIDERED AND DECIDED

On May 25, 2004, the parties notified the Panel during a pre-hearing conference call that all parties agreed to dismiss with prejudice Respondent Bear Stearns from this matter. Respondent Bear Stearns was so dismissed on May 25, 2004.

The Panel denied Respondents Tradestation and Klem's Motion to Dismiss by Order dated May 25, 2004.

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.

AWARD

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

1. Respondents Tradestation and Klem are jointly and severally liable to and shall pay to Claimant Darlene Stuart compensatory damages in the amount of \$175,000.00, plus simple interest at a rate of 6% per annum from September 4, 2003 through the date the Award is paid in full;
2. Respondents Tradestation and Klem are jointly and severally liable to and shall pay to Claimant Darlene Stuart \$500.00 to reimburse Claimants for their initial claim Filing Fee;
3. All claims for punitive and treble damages are denied in their entirety;
4. All claims for attorneys' fees are denied in their entirety;
5. The parties shall bear their respective costs, except as Fees are specifically addressed below; and
6. Any and all relief not specifically addressed herein is denied in its entirety.

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	= \$ 500.00
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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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondents Tradestation and Bear Stearns are parties.

<u>Respondent Tradestation</u>	
Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$ 5,000.00
Total Member Fees	= \$ 8,550.00

Respondent Bear Stearns

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00
Total Member Fees	= \$ 8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

September 20 – 23, 2004, adjournment by Respondents = fee waived by Panel

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 Panel @ \$ 1,200.00 = \$ 2,400.00

Pre-hearing conferences:	April 22, 2004	1 session
	May 25, 2004	1 session

Six (6) Hearing sessions @ \$ 1,200.00 = \$ 7,200.00

Hearing Dates:	August 8, 2005	2 sessions
	August 9, 2005	2 sessions
	August 10, 2005	2 sessions

Total Forum Fees = \$ 9,600.00

The Panel has assessed \$ 9,600.00 of the forum fees jointly and severally to Respondents Tradestation and Klem.

FEE SUMMARY

Claimants are jointly and severally assessed and shall pay:

Initial Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 1,700.00
Refund Owed to Claimants	= \$ 1,200.00

Respondent, Tradestation, is assessed and shall pay:

Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 00.00

Respondent, Bear Stearns, is assessed and shall pay:

Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 00.00

Respondents Tradestation and Klem are jointly and severally assessed and shall pay:

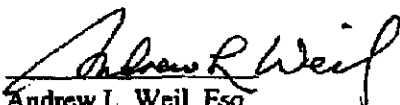
Forum Fees	= \$ 9,600.00
Total Fees	= \$ 9,600.00
Less payments	= \$.00
Balance Due NASD Dispute Resolution	= \$ 9,600.00

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

ARBITRATION PANEL

Andrew L. Weil, Esq.	-	Public Arbitrator, Presiding Chairperson
Michael R. Stabile, Jr., Esq.	-	Public Arbitrator, Panelist
Paul H. McKenna	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Andrew L. Weil, Esq.
Public Arbitrator, Presiding Chairperson

8/12/2005

Signature Date

Michael R. Stabile, Jr., Esq.
Public Arbitrator, Panelist

Signature Date

Paul H. McKenna
Non-Public Arbitrator, Panelist

Signature Date

August 12, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Andrew L. Weil, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Michael R. Stabile, Jr.
Michael R. Stabile, Jr., Esq.
Public Arbitrator, Panelist

8-12-05
Signature Date

Paul H. McKenna
Non-Public Arbitrator, Panelist

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Non-Public Arbitrator, Panelist

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