

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

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In the Matter of the Arbitration Between:

Steven Rubel (Claimant) v. KSH Investment Group, Inc., Bear Stearns Securities Corp.,  
Harvey R. Kohn, Cary W. Sucoff and John C. Hatsopoulos (Respondents)

Case Number: 05-01007

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Members and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant Steven Rubel hereinafter referred to as "Claimant": Charles G. Fiore, Esq.,  
Lewis & Fiore, Esqs., New York, NY.

Respondents KSH Investment Group, Inc. ("KSH"), Harvey R. Kohn ("Kohn"), Cary W.  
Sucoff ("Sucoff"), and John C. Hatsopoulos ("Hatsopoulos") hereinafter collectively  
referred to as "Respondents": Brian Guillorn, Esq., New York, NY.

Respondent Bear Stearns Securities Corp. hereinafter referred to as "Bear Stearns":  
David Smith, Esq., Smith Campbell, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 7, 2005.

Claimant signed the Uniform Submission Agreement: February 17, 2005.

Statement of Answer and Counterclaims filed by Respondents on or about: May 3,  
2005.

Motion to Dismiss filed by Respondents, on or about: May 3, 2005.

Respondent KSH did not submit a Uniform Submission Agreement.

Respondent Kohn did not submit a Uniform Submission Agreement.

Respondent Sucoff did not submit a Uniform Submission Agreement.

Respondent Hatsopoulos did not submit a Uniform Submission Agreement.

Statement of Answer and Motion to Dismiss filed by Bear Stearns on or about: April 19,  
2005.

Respondent Bear Stearns did not submit a Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: failure to supervise, unsuitable investments, unauthorized trading, failure to follow client's direction and violation of Section 349 of the New York State General Business Law. The causes of action relate to various securities including Pfizer, Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In their counterclaims, Respondents asserted the following causes of action: estoppel, fraud in the inducement, breach of contract, indemnification.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$500,000.00, \$1,000,000.00 for lost equity, \$1,500,000.00 in punitive damages, attorneys' fees and costs.

Respondents requested compensatory damages in the amount of \$1,250,000.00 and damages in the amount of \$100,000.00, costs, disbursements and attorneys' fees.

Respondent Bear Stearns requested the dismissal of the Statement of Claim, that all forum fees should be assessed against Claimant and that the panel award Bear Stearns such other and further relief including reasonable attorneys' fees as the panel deems just under the circumstances.

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

Respondents KSH, Bear Stearns, Kohn, Sucoff and Hatsopoulos did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Prior to the hearing, Respondent Bear Stearns filed a Motion to Dismiss. After due deliberation the Panel granted the Motion.

Prior to the hearing, Respondents filed a Motion to Dismiss. After due deliberation the Panel denied the Motion, except for those portions of the Statement of Claim which deal with purchases made prior to February 25, 1999 which are hereby dismissed.

Respondent Hatsopoulos did not appear at the hearing but was represented by counsel.

Respondent Hatsopoulos filed a Motion to Dismiss and a request for expungement at the conclusion of Claimant's case. After due deliberation, the Panel granted the Motion.

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.

### **ARBITRATORS' REPORT**

The Panel directs sanctions against Respondents KSH Investment Group, Kohn and Sucoff for failure to adequately respond to Claimant's discovery requests. Respondents' search for records was at best superficial and Respondent Sucoff's testimony regarding record retention was not credible. On one hand he testifies that all records over four years old were routinely destroyed, yet, selective documents dated May 8, 1998, February 11, 1999, February 16, 1999, April 27, 1999, May 3, 1999, July 27, 1999, etc. were annexed as exhibits to his May 3, 2005 affidavit.

For the record, notwithstanding the Panel's adverse inference regarding the documents supposedly destroyed and not produced, the Panel holds in its position that the Claimant, not the Respondents, is responsible for Claimant's loss.

### **AWARD**

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

1. Claimant's claims are dismissed in their entirety.
2. Respondents' counterclaims are dismissed in their entirety.
3. Respondents KSH, Kohn and Sucoff are jointly and severally liable for and shall pay to Claimant sanctions in the amount of \$25,000.00.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent John C. Hatsopoulos' registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent John C. Hatsopoulos must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

5. Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$ 500.00
Counterclaim filing fee	= \$2,000.00

### **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 persons at the time of the events giving rise to the dispute. Accordingly, KSH Investment Group, Inc. and Bear Stearns Securities Corp. are parties.

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

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: December 19, 2005	1 session

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: September 12, 2005	1 session

Four (4) Hearing sessions @ \$1,200.00 per session	= \$4,800.00
Hearing Dates: April 26, 2006	2 sessions
April 27, 2006	2 sessions

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Total Forum Fees	= \$6,450.00
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1. The Panel has assessed \$3,225.00 of the forum fees to Claimant.
2. The Panel has assessed \$3,225.00 of the forum fees jointly and severally to Respondents KSH, Kohn and Sucoff.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$3,225.00
Total Fees	= \$3,725.00
Less payments	= \$1,700.00

Balance Due NASD Dispute Resolution = \$2,025.00

2. Respondent Bear Stearns is solely liable for:

<u>Member Fees</u>	= \$8,550.00
<u>Total Fees</u>	= \$8,550.00
<u>Less payments</u>	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent KSH is solely liable for:

<u>Member Fees</u>	= \$8,550.00
<u>Total Fees</u>	= \$8,550.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$8,550.00

4. Respondents KSH, Kohn, Hatsopoulos and Sucoff are jointly and severally liable for:

<u>Filing Fee</u>	= \$2,000.00
<u>Total Fees</u>	= \$2,000.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,000.00

5. Respondents KSH, Kohn and Sucoff are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,225.00
<u>Total Fees</u>	= \$3,225.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,225.00

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

**ARBITRATION PANEL**

Vincent C. Pangia	-	Public Arbitrator, Presiding Chairperson
Carole D. Green, Esq.	-	Public Arbitrator
Joan Seewald Brodsky	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Vincent C. Pangia  
Public Arbitrator, Presiding Chairperson

6/19/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Carole D. Green, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Joan Seewald Brodsky  
Non-Public Arbitrator

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

June 20, 2006

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Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution  
Arbitration No. 05-01007  
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**ARBITRATION PANEL**

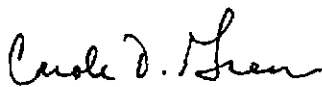
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