

**Amended Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of Claimants  
Max and Doris Gendelman

Case Number: 05-04181

Name of Respondent  
Bear, Sterns & Co., Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Max and Doris Gendelman, hereinafter referred to as "Claimants," appeared *pro se*.

For Bear, Sterns & Co., Inc. ("Bear Sterns"), hereinafter referred to as "Respondent":  
Peter R. Sonderby, Esq., Ulmer & Berne, L.L.P., Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: August 8, 2005.

Claimants' Motion for Change of Venue filed on or about: September 30, 2005.

Statement of Answer filed on or about: November 11, 2005.

Respondent's Opposition to Motion for Change of Venue filed on or about: November 22, 2005.

Claimants signed the Uniform Submission Agreement on: December 1, 2005.

Respondent signed the Uniform Submission Agreement on: December 1, 2005.

Respondent's Motion for Change of Venue filed on or about: February 2, 2006.

Claimants' Response to Motion for Change of Venue filed on or about: February 3, 2006.

Claimants' Motion for Submission of Revised Claim filed on or about: June 15, 2006.

Respondent's Motion to Amend Award filed on or about: July 6, 2006.

Claimants' Response to Respondent's Motion to Amend Award filed on or about: July 17, 2006.

### **CASE SUMMARY**

Claimants asserted the following causes of action: 1) unsuitability; 2) unauthorized trading; and, 3) gross negligence. These causes of action relate to the purchase and sale of various securities including, but not limited to, Dynex Capitol Preferred, ABN Amro Capital Funding Trust, Potomac Electric Power Company Trust I, Amgen, Inc., and Schering Plough Corporation.

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

### **RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in the amount of \$173,558.00; 2) interest; 3) forum fees; 4) witness and production fees; 5) costs; 6) punitive damages; and, 7) other awards that the Panel may see fit and justified.

Respondent requested that the Panel: 1) dismiss the Statement of Claim in its entirety prior to the hearing; 2) assess all administrative and hearing costs against the Claimants; 3) sanction the Claimants in the amount of \$25,000 or such other amount as may be reasonably required to fully reimburse Respondent for attorneys' fees and other related expenses incurred; and, 4) award such other and further relief as the Panel may deem appropriate.

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

On or about February 9, 2006, the Panel denied Respondent's Motion for Change of Venue.

During the evidentiary hearing on June 22, 2006, the Panel granted Claimants' Motion for Submission of Revised Claim to increase compensatory damages from \$160,454.00 to \$173,558.00. In addition, Claimants asserted an additional cause of action of gross negligence during the evidentiary hearing. The Panel granted said motion.

During the evidentiary hearing on June 22, 2006, Respondent made an oral Motion to Dismiss the Statement of Claim. The Panel denied said Motion.

Respondent filed a Motion to Amend the Award in which Respondent requested that the Panel modify the date upon which the Dynex transaction occurred from March 2000 to March 2001, and further requested that the Award reflect that the accrual of interest begins March 21, 2001 rather than March 2000. In their response, Claimants objected to any changes in the Award. On or about July 24, 2006, the Panel issued an Order granting Respondent's Motion to Amend the Award.

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. Respondent is liable on the claim of unauthorized trading and shall pay to Claimant compensatory damages in the amount of \$7,036.00 of which \$6,000.00 relates to the Dynex sale in March 2001, \$560.00 relates to unauthorized commission fees, and \$476.00 relates to improper management fees. Alternatively, if Respondent has already transferred to Claimants \$476.00 for improper management fees, Respondent shall pay to Claimants compensatory damages in the amount of \$6,560.00.
2. Respondent shall pay to Claimants interest at the Florida statutory rate, which shall accrue from March 21, 2001 until the date of payment of the Award.
3. Claimants' request for punitive damages is denied.
4. Respondent's requests for sanctions and attorneys' fees are denied.
5. Any and all claims for relief not specifically addressed herein 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	= \$ 300.00
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent Bear Sterns is a party and a member firm.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

### **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:

There were no three-day cancellation fees assessed during these proceedings.

### **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.

There were no injunctive relief fees assessed during these proceedings.

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

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 per session	= \$2,250.00
Pre-hearing conferences: February 9, 2006 1 session	
May 10, 2006 1 session	
Two (2) Hearing sessions @ \$1,125.00 per session	= \$2,250.00
Hearing Date: June 22, 2006 2 sessions	
Total Forum Fees	= \$4,500.00

The Panel has assessed \$2,250.00 of the forum fees to Claimants, jointly and severally.

The Panel has assessed \$2,250.00 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.

There were no administrative costs incurred during these proceedings.

### **Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$2,250.00
Total Fees	= \$2,550.00

<u>Less payments</u>	= \$2,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	= \$2,250.00
Total Fees	= \$7,450.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$2,250.00

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

**ARBITRATION PANEL**

Carol Ann Anderson, Esq.	-	Public Arbitrator, Presiding Chairperson
David P. Slater, Esq.	-	Public Arbitrator
Allen J. Lefton	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Carol Ann Anderson, Esq.  
Public Arbitrator, Presiding Chairperson

07/25/06  
Signature Date

/s/  
David P. Slater, Esq.  
Public Arbitrator

07/26/06  
Signature Date

/s/  
Allen J. Lefton  
Non-Public Arbitrator

07/26/06  
Signature Date

07/28/06  
Date of Service (For NASD Dispute Resolution office use only)

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Carol Ann Anderson, Esq.  
Public Arbitrator, Presiding Chairperson

July 25 2006  
Signature Date

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David P. Slater, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Allen J. Lefton  
Non-Public Arbitrator

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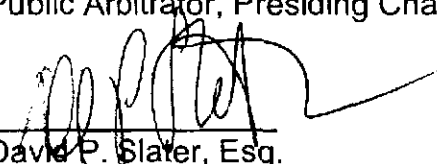
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David P. Slater, Esq.  
Public Arbitrator

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**RECEIVED**  
JUL 27 2006  
FL ARBITRATION

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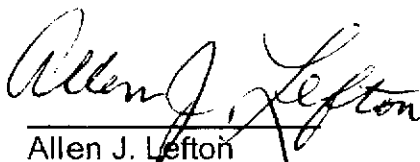
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