

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

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In the Matter of the Arbitration Between:

Marilyn Nevard Herrmann (Claimant) vs. Bear Stearns & Co., Inc. (Respondent)

Case Number: 05-05549

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Claimant Marilyn Nevard Herrmann hereinafter referred to as "Claimant": Leslie Trager, Esq., Morley & Trager, New York, NY.

Respondent Bear Stearns & Co., Inc. hereinafter referred to as "Respondent": Jeffrey A. Mitchell, Esq., and E. Timothy McAuliffe, Jr., Esq., Dreier LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: October 25, 2005.

Claimant signed the Uniform Submission Agreement: May 11, 2005.

Statement of Answer and Motion to Dismiss filed by Respondent on or about:  
December 22, 2005.

Respondent signed the Uniform Submission Agreement: November 28, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: suitability, breach of contract, breach of fiduciary duty, negligence, and failure to supervise. The causes of action relate to unspecified equity stocks.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$323,822.00 plus interest beginning from June 30, 2002, and attorneys' fees.

Respondent requested dismissal of the Statement of Claim in its entirety, costs, attorneys' fees, and other and further relief as the Panel deems just and appropriate under the circumstances.

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

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 for and shall pay to Claimant compensatory damages in the amount of \$42,063.00 plus interest at the rate of 9% per annum from the date of the Award until the date the Award is paid in full.
2. Any and all relief not specifically addressed herein 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	= \$	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, Bear Stearns & Co., Inc. is a party.

Member Surcharge	= \$	1,700.00
Pre-Hearing Process Fee	= \$	750.00
Hearing Process Fee	= \$	2,750.00

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

One (1) Decision on discovery-related motion on the papers with (1) one arbitrator @ \$200.00	= \$	200.00
Respondent submitted one discovery-related motion		

Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$	2,250.00
Pre-hearing conferences: March 28, 2006	1 session	
May 18, 2006	1 session	

Ten (10) Hearing sessions with Panel @ \$1,125.00		= \$ 11,250.00
Hearing dates:	September 11, 2006	2 sessions
	September 12, 2006	2 sessions
	September 13, 2006	2 sessions
	November 2, 2006	2 sessions
	November 3, 2006	2 sessions
<hr/> Total Forum Fees		= \$13,700.00

1. The Panel has assessed \$13,700.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 1,575.00
<u>Refund Due Claimant</u>	= \$ 1,275.00

2. Respondent is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 13,700.00
<u>Total Fees</u>	= \$ 18,900.00
<u>Less payments</u>	= \$ 5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 13,700.00

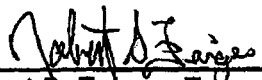
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Robert S. Feigen, Esq.	-	Public Arbitrator, Presiding Chairperson
Howard W. Hirschhorn	-	Public Arbitrator
Joseph M. Buffone, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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.

  
\_\_\_\_\_  
Robert S. Feigen, Esq.  
Public Arbitrator, Presiding Chairperson

11/16/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Howard W. Hirschhorn  
Public Arbitrator

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

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Joseph M. Buffone, Esq.  
Non-Public Arbitrator

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Signature Date

November 20, 2006

Date of Service (For NASD Dispute Resolution use only)

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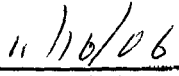
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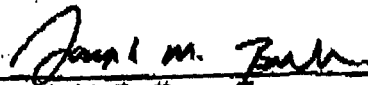
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