

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)

VICTOR and MARILYN TETREAUULT, JTWROS,)

Claimants,)

vs.)

BEAR STERNS & COMPANY and)
STEVEN KIRSCH,)

Respondents.)

Case #87-01239
Award

Heard before the members of the Arbitration Panel:

Constance J. McCaughey, Esq.
Mr. Roger C. Benson
Mr. Jeffrey Wuliger

CASE SUMMARY

This claim was filed with the NASD, Inc. on September 15, 1987. The hearing was conducted in Tampa, Florida on February 13th, 14th, 15th, 1989, March 17th, 1989 and March 12th, 13th and 14th, 1990.

Claimants Victor and Marilyn Tetreault ("the Tetreault's") alleged that Respondents Bear Sterns & Company ("Bear") and Steven Kirsch ("Kirsch") were liable for: violations of Section 10(b) and Rule 10b-5 of the Securities and Exchange Act of 1934; breach of fiduciary duty; negligence; violations of Section 517.07 of the Florida Statutes; and violations of Sections 895.03 and 895.05 of the Florida Statutes, all relating to stock purchases in Claimants' account.

Respondents asserted defenses of: ratification; that all trades were made with the consent of Claimants; Claimants failed to exercise due diligence; laches; estoppel; waiver; negligence; comparative negligence; lack of proximate cause; Claimants were familiar with the risks and rewards of trading on margin; New York law controls and, therefore, the claims predicated on the Florida Statutes are not available; the securities identified by Claimants are exempt from the registration requirements of Chapter 517 of the Florida Statutes; there is no private right of action under Florida Statute Section 895.05; there is no underlying predicate offense to support the Florida RICO claim; Claimants alleged injury is redressable under the Florida Securities Act; Respondents had no criminal intent as required under Chapter 895 of the Florida Statutes; there is no pattern of racketeering activity; Claimants failed to mitigate their damages; there is no private right of action for violations of NASD or NYSE Rules nor for violations of Section 17(a) of the Securities Act of 1933; Respondent Bear cannot be deemed to be a "culpable person" and an "enterprise" at the same time and, therefore, is not liable under the Florida RICO Act; Claimants failed to State a claim for relief; Respondents are not liable under the Florida Securities Act which govern wholly intrastate transactions; there is no legal basis for an award of punitive damages, attorney's fees or prejudgement interest for unliquidated damages; and otherwise denied liability.

RELIEF REQUESTED

Claimants requested damages in the amount of \$110,605.71 plus interest, punitive damages, attorney's fees and other costs. Respondents requested dismissal of the claim.

AWARD

On February 13th, 14th and 15th, 1989, March 17th, 1989 and March 12th, 13th and 14th, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on February 13, 1989, and by Respondents on November 19, 1987. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondents Bear and Kirsch are hereby liable, jointly and severally, and shall pay to the Claimants the amount of Forty Six Thousand One Hundred Twenty Five and 38/100 (\$46,125.38) Dollars.
3. Claimants request for attorney's fees is hereby dismissed in all respects.
4. Respondent Bear is hereby liable and shall pay to Claimants the further amount of Eight Thousand Five Hundred Forty Four 54/100 (\$8,544.54) Dollars for costs and expenses.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel have assessed forum fees in the amount of Thirteen Thousand and 00/100 (\$13,000) Dollars (\$1000 x 13 sessions). Respondent Bear is hereby assessed forum fees in the amount of Thirteen Thousand and 00/100 (\$13,000) Dollars payable directly to the NASD, Inc. The National Association of Securities Dealers, Inc. shall refund the One Thousand and 00/100 (\$1,000) Dollar filing fee previously deposited by the Claimant with the NASD, Inc.
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Constance J. McCaughey, Esq.
Mr. Roger C. Benson
Mr. Jeffrey Wuliger

Received this 2nd day of April 1990.