

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

**In the Matter of Arbitration Between**

**DAVID A. SCHMITT**

**Claimant**

**NASD NO. 88-01147**

**v.  
BEAR STEARNS & CO., INC.  
and KENNELM CASSELL**

**Respondents**

**CASE SUMMARY**

Claimant alleges that Respondents churned his account, recommended unsuitable transactions and knowingly or with reckless disregard materially misrepresented or omitted the facts that an ordinary investor would reasonably rely upon.

That Respondent Bear Stearns is responsible for the actions of Respondent Kennelm Cassell under the doctrine of Respondent Superior. That Bear Stearns failed to adequately supervise Cassell.

Respondent denied all claims and further asserted that Claimant was a sophisticated investor, was aware of all transactions in the account and approved of the transactions and strategy followed. The losses that occurred in the account were due to the extreme market conditions that arose in October of 1987. The account was reviewed and adequately supervised by Bear Stearns.

**RELIEF REQUESTED**

Claimants request compensatory damages in the amount of \$150,000, consequential damages, interest at the legal rate, costs and attorney's fees. Respondent's request dismissal of all claims.

**AWARD**

On June 19 and 21, 1989, the undersigned heard the controversy between the parties as set forth in submissions to arbitration signed on March 21, 1988 by the Claimant and on July 14, 1988 by Respondent Bear Stearns & Co., Inc. and by Respondent Kennelm Cassell on September 12, 1988.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted against the Respondents, Bear Stearns & Co., Inc. and Kennelm Cassell shall be dismissed;

2. Each party shall bear their own costs incurred in connection with this proceeding;

3. The \$750.00 filing fee initially deposited by the Claimant, shall be retained. In addition, in accordance with Section 43(b) of the NASD Code of Arbitration Procedure, Respondent, Bear Stearns shall be assessed \$1,500.00 in forum fees. These fees shall be paid directly to the NASD.

BY THE PANEL

S/STheodor W. Wroblewski, Esq.  
President & Chair

S/SKaryn Z. Zivovos, Esq. \_\_\_\_\_

S/SMr. Dennis A. Dunne \_\_\_\_\_