

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Kenneth L. Geist

88-02937

Name of Respondents

Bear Stearns & Co., Inc.
Baird Patrick & Co., Inc.
J. Edmund & Co.
Stuart Sosler, Ludwig Cserhart
and John E. Ligums

Heard Before:

Public/Industry

Murray I. Sommer
Robert Seaman
Theodore Kimelman

Public Arbitrator
Public Arbitrator
Industry Arbitrator

CASE SUMMARY

Kenneth L. Geist (Claimant or Geist) complained that the individual respondents, Stuart Sosler (Sosler), Ludwig Cserhart (Cserhart) and John E. Ligums (Ligums), the corporate respondents and J. Edmund & Co., constituted a brokerage network which, with Edward Gilbert (Gilbert), a person who had been convicted of violations of federal securities laws, manipulated the claimant, an unsophisticated investor, so as to perpetrate a fraud upon him and cause him to lose a substantial portion of an inheritance.

At the instruction of Gilbert who, Geist continues, dominated him and to whom he was persuaded to look for investment guidance, Geist opened discretionary accounts in August, 1982, at Baird Patrick & Co., Inc., where Cserhart was then employed as a registered representative; in October, 1982, at Bear Stearns & Co., Inc., where Sosler was similarly employed; and a non-discretionary account in January, 1983, at J. Edmund & Co., where Ligums was its chief executive officer and a registered representative.

Geist contended that Sosler, Cserhart and Ligums knew of Gilbert's conviction and the restrictions imposed by the probation order upon his activities as investment advisor or representative; that Gilbert, Sosler and Cserhart were aware that Geist was entrusting to them assets equal to his entire net worth and from which he derived his sole means of support (except from

undependable earnings as an author); that he was a conservative investor who, as respondents knew, did not want to trade speculative securities or options or trades on margin; they, at Gilbert's instructions, nevertheless, did just that. Further, Gilbert directly or otherwise had an interest in or controlled shares of one security whose shares were being traded in claimant's account, while J. Edmund & Co. had a proprietary interest in shares of a security on which options were traded in his account.

The Claimant alleged that respondents' conduct amounted to racketeering activity, common law and securities law fraud, breaches of contract, breaches of fiduciary duty, violations of the "Know Your Customer" Rule (NYSE Rule 405) and the Fair Practice Rules of the NASD (Section 2, Art. III). As a consequence, the respondents are said to have earned excessive commissions and margin interest while causing Geist large monetary losses and emotional and physical distress.

The answers by the respondents to the statement of claim denied, to the extent applicable to their respective positions, wholly or in part, many of the introductory and background statements (e.g., the existence of a discretionary account in claimant's name at J. Edmund & Co. and at Baird Patrick & Co., Inc.); respondents also denied all material allegations of wrongdoing. Defenses common to all were offered: statute of limitations; estoppel by conduct; ratification and waiver. In addition, respondents set forth separate defenses that they considered applicable; examples of the defenses by:

- a. Bear Stearns & Co., Inc. and Sosler: failure to set forth a claim upon which relief can be granted; laches; failure to identify elements necessary for a RICO claim (18 U.S.C. Section 1961, et seq.; hereafter the RICO statute);
- b. Baird Patrick & Co., Inc. and Cserhart: general release; absence of right of action for recovery under Rule 405, NYSE Rules and Section 2, Art. III, NASD Rules;
- c. J. Edmund & Co. and Ligums: estoppel by experience.

RELIEF REQUESTED

Claimant asked for joint and several recovery against all respondents as follows: not less than \$4,275,000. representing three times his actual losses, commissions and margin interest paid and his attorneys fees, pursuant to the appropriate sections of the RICO statute; more than \$1,100,000 representing claimant's losses and more than \$325,000; representing excessive

margin interest and commissions paid by claimant (the exact amounts of losses, margin interest and commissions to be determined at hearing) on each of the next six counts; and more than \$50,000 representing medical and related expenses. On each count, claimant asked for more than \$1,000,000 punitive damages, and on all counts he demanded interest, costs, disbursements, attorneys' fees and other just and proper relief that the Panel may award.

All respondents asked for dismissal of all claims. Bear Stearns & Co., Inc., Sosler, Baird, Patrick & Co., Inc. and Cserhart also asked for the recovery of their costs and disbursements.

AWARD

The Claimant's claim was filed on September 16, 1988. The undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant on September 15, 1988 and by Respondent Bear Stearns & Co., Inc. on November 11, 1988, by Respondent Baird, Patrick & Co., Inc. on December 5, 1988, by Respondent Ludwig Cserhart on January 6, 1989, by Respondent Stuart Sosler on December 13, 1988 and by Respondent J. Edmund & Co., Inc. and John E. Ligums on December 22, 1988. The arbitrators heard testimony from many witnesses in 33 sessions during 17 hearing days in New York, NY, on January 22, 1990, 1 session, April 9, 1990, 2 sessions, April 12, 1990, 2 sessions, April 13, 1990, 2 sessions, April 17, 1990, 2 sessions, September 5, 1990, 2 sessions, September 6, 1990, 2 sessions, October 22, 1990, 2 sessions, October 23, 1990, 2 sessions, October 24, 1990, 2 sessions, December 17, 1990, 2 sessions, December 18, 1990, 2 sessions, December 19, 1990, 2 sessions, January 11, 1991, 2 sessions, February 27, 1991, 2 sessions, February 28, 1991, 2 sessions, March 1, 1991, 2 sessions and received voluminous exhibits from the parties.

The transcript reflects the extensive inquiry into each aspect of the claims by all parties and their relationship with each other; the factual matters and the legal positions were thoroughly and expertly presented.

The arbitrators make the following award which incorporates the order, dated February 11, 1991, deciding the several motions to dismiss:

1. The claims against each of the respondents are dismissed;
2. Each party shall bear his or its own counsel fees, witness fees, expenses (including transcription costs) except those which the parties may have agreed to share;
3. Forum fees totaling \$33,000 are assessed in the following amounts: