

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between

Name of Claimant(s)

John M. and Joyce Coutta

Name of Respondent(s)

Bear Stearns & Company
Dennis C. Koenning

Case No. 90-02179

Heard before the members of the Arbitration Panel:

Steven D. Elias, Esq.

Public

Camille Besold

Public

Richard B. Frost

Industry

REPRESENTATION

Claimants, John M. and Joyce Coutta ("Coutta"), were represented by Russell L. Forkey, Esq. of Russell L. Forkey, P.A.

Respondents, Bear, Stearns & Co., Inc. ("Bear Stearns") and Dennis C. Koenning ("Koenning"), were represented by James M. Hubbert, Esq. of Bear Stearns.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on September 18, 1990. Claimants alleged that Respondents, through Koenning, solicited Claimants to open an account; made misrepresentation of and omitted to state material facts; recommended and sold unsuitable equity securities and failed to execute a stop loss order; that Respondents' actions constituted fraud, breach of fiduciary duty, negligence, breach of contract and negligent supervision.

In a Statement of Answer filed with the NASD on December 17, 1990, Respondents denied all allegations of wrongdoing and alleged that Claimants never entered a stop loss order at any price or represented the imminent take-over of Lone Star.

Respondents alleged the affirmative defenses of no stop loss order; failure to state a claim; estoppel; laches; failure to mitigate damages; Claimants own negligence caused loss; ratification; and good faith.

RELIEF REQUESTED

Claimants requested damages in the amount of \$19,386.16, interest, punitive damages in the amount of \$20,000.00 and costs.

Respondents requested dismissal and costs.

AWARD

On June 11 and 12, 1991, in Fort Lauderdale, Florida, during a hearing lasting four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on July 6, 1990, by Koenning on October 30, 1990, and signed on December 13, 1990, by Mark E. Lehman on behalf of Respondent, Bear Stearns.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided 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 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.
2. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
3. Claimants' requests for costs and punitive damages are denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,600.00, (4 sessions x \$400.00 per session). Claimants are hereby assessed \$800.00, for which the NASD shall retain the \$400.00 session fees previously deposited in partial satisfaction thereof. Respondents, Bear Stearns and Koenning, are hereby assessed \$800.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

None.

Concurring Arbitrators' Signatures

/S/
Steven D. Elias, Esq.

/S/
Camille Besold

/S/
Richard B. Frost

Date of Decision: June 24, 1991