

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration BetweenName of Claimants

Dr. John & Margaret Edsall

PUBLIC

91-02800

Name of Respondents

Bear Stearns & Company

vs.

Derby Securities Inc.

REPRESENTATION

For Claimants John & Margaret Edsall ("Claimants"): Dr. Edsall represented Claimants.

For Respondent Bear Stearns & Company ("Bear"): Nicholas K. Notias, of Bear.

For Respondent Derby Securities Inc. ("Derby"): Eva H. Posman, a sole practitioner.

CASE INFORMATION

Statement of Claim filed: September 3, 1991.

Claimants' Submission Agreement signed on: September 3, 1991.

Statement of Answer filed by Respondent, Bear on: November 11, 1991.

Respondent Bear's Submission Agreement signed on: November 12, 1991.

Statement of Answer filed by Respondent, Derby on: January 29, 1992.

Respondent Derby's Submission Agreement signed on: April 20, 1992.

HEARING INFORMATION

Hearing Date/Session: April 20, 1992/1 session.

Hearing Location: NASD, New York City, NY.

CASE SUMMARY

Claimants alleged they received a letter from Bear informing them that their broker, Allison Baer, had ceased conducting securities business and that it, Bear, was prepared to accept orders for the liquidation of any securities in their account. Claimants alleged they asked Derby to act in their stead.

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Claimants alleged they held 3200 shares of Angeles Mortgage Investment Trust Class A ("Angeles") which Derby advised them to sell. Claimants alleged the stock was sold and Bear was unable to produce the Stock Certificate and Claimants were forced to buy back the stock. Claimants alleged Bear located the Certificate approximately eleven (11) months later but the value of the stock had decreased by then. Claimants alleged Bear's failure to produce the Certificate in a timely manner resulted in a loss to Claimants.

Respondent Bear alleged it forwarded a letter to Claimants which explained the division of responsibility between a clearing firm and a correspondent firm and explained Bear's role with regards to their account in that all orders and instructions relating to their account were entered directly with their account executive at the clearing firm. Bear maintained that when it ceased clearing for Allison Bear, Claimants signed a transfer instruction form requesting the delivery of their account to Derby. Claimants then placed an order to sell the Angeles shares with Derby. Bear alleged Derby failed to realize the securities in Claimants' account were the old certificates and could not be used to settle the sale transaction. Bear advised Derby it was not notified of the change in certificates and contacted Angeles's replacement agent, First City National Bank ("First").

Bear asserted a third-party claim against Derby alleging it was Derby's obligation to know what positions were held by its clients prior to effecting a transaction, therefore, Derby knew or should have known Claimants did not possess the new certificates prior to placing the sell order. Bear asserted Derby was negligent when selling the new certificates for Claimant as it was aware Claimants maintained the old certificates upon receiving the transfer instructions. Bear maintained Derby was aware Bear had initiated the process of obtaining the new certificates and should have filed a lost certificate extension.

Respondent Derby denied it knew or should have known that Claimants did not possess the new certificates for Angeles prior to placing the sell order and denied it was negligent when selling the new certificates for Claimants' account. Derby denied it was aware Bear had contacted First to obtain new certificates and denied it should have or could have filed for a lost certificate extension. Finally, Derby asserted Bear was negligent in not obtaining the Angeles shares from Claimants' account; in not determining that said shares were missing from the account; in not providing Derby with documentation that Claimants' owned the new Angeles shares and that Bear would deliver the shares upon receipt of them; and that it is inappropriate of Bear to suggest Derby should have filed for a lost certificate extension when Bear refused to provide the information necessary to file for said extension.

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RELIEF REQUESTED

Claimants requested: actual damages in the amount of \$14,433.00, plus interest.

Respondents requested: the Statement of Claim be dismissed in its entirety and costs. In the alternative, if Claimants were awarded damages, Bear requested all damages be assessed against Derby, individually.

Respondent Derby requested: Bear's third party claim be dismissed in its entirety and costs.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1- Respondent Bear Stearns & Company is liable and shall pay to Claimants the sum of \$16,000.00, inclusive of interest;
- 2- Respondent Bear Stearns & Company's third-party claim against Respondent Derby Securities Inc. is dismissed in its entirety, with prejudice;
- 3- All other claims are dismissed;
- 4- Each party shall bear its own expenses, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure ("Code"), the NASD shall retain the \$100.00 non-refundable filing fee and the \$300.00 hearing session deposit previously deposited by Claimants. Pursuant to Section 44c of the Code, Respondent Bear Stearns & Company shall pay to the NASD the sum of \$500.00 to represent the non-refundable filing fee regarding their third-party claim against Derby Securities Inc. and following Forum Fees are assessed.

1 session X \$300.00 = \$300.00

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Forum fees Assessed Against:

1- Respondent Bear Stearns & Company in the amount of \$300.00; however, in lieu of payment to the NASD, Bear Stearns & Company shall reimburse Claimants the sum of \$300.00 to represent the hearing session fee previously deposited by Claimants. Respondent Bear Stearns & Company shall also reimburse Claimants the sum of \$100.00 to represent the non-refundable filing fee previously deposited by Claimants.

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

Arbitrator's Signature


John E. McCracken/Public Arbitrator

Date of Decision: May 12, 1992