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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Anthony F. & Nancy M. Podorski

91-04016

Names of Respondents

Bear Stearns & Company
Interstate/Johnson Lane Corporation
David A. Elgart

REPRESENTATION

For Claimants: Thomas R. Grady, Esq. of Grady & Associates, Naples, Florida.

For Respondent, Bear Stearns & Company, ("Bear Stearns"): Laura H. Robinson, Esq. and Paul Stivers, Esq. of Rogers & Hardin, Atlanta, Georgia.

For Respondents, Interstate/Johnson Lane Corporation ("Interstate") and David A. Elgart ("Elgart"): Louise B. Matte, Esq. of Sutherland, Asbill & Brennan, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed: 12/13/91.

Claimants' Submission Agreement signed on: 12/19/91.

Respondent, Bear Stearns' Statement of Answer filed: 8/28/92.

Respondent, Bear Stearns' Submission Agreement signed on: 8/31/92 by Mark E. Lehman on behalf of Bear Stearns.

Respondents, Interstate & Elgart's joint Statement of Answer filed: 8/28/92.

Respondent, Interstate's Submission Agreement signed on: 7/10/92 by Michael D. Hearn on behalf of Interstate.

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Respondent, Elgart's Submission Agreement signed on: 8/24/92.

HEARING INFORMATION

Pre-Hearing Conferences held: 9/20/93
3/04/94
3/05/94

Hearing Date/Sessions: 3-15-94/two (2) sessions.
3-16-94/two (2) sessions.
3-17-94/two (2) sessions.
9-12-94/three(3) sessions.
9-13-94/three (3) sessions.
9-14-94/two (2) sessions.
9-19-94/two (2) sessions.
9-20-94/three (3) sessions.
9-21-94/two (2) sessions.

Total number of sessions: twenty-one (21) sessions.

Hearing Location: Tampa, Florida.

CASE SUMMARY

Claimants alleged that Respondents engaged in a fraudulent and deceptive bond trading scheme which resulted in excessive trading, hundreds of thousands of dollars of unnecessary margin interest expense and substantial monetary losses. Claimants further alleged: that virtually all securities sold to them by Respondents were non-rated municipal junk bonds issued by various healthcare facilities which, contrary to the Respondents' representation, were highly risky, misrepresented and unsuitable; that without limitations, Respondents charged grossly excessive and fraudulent mark-ups and commissions on most of the municipal bond transactions; that the actions and omissions of Respondents resulted in a breach of Respondents' fiduciary duties to the Claimants, a violation of the Florida Securities & Investor Protection Act, fraud, negligence, gross negligence and negligent supervision; that Respondents failed to use the requisite amount of due diligence prior to recommending investments for purchase and that Respondents' actions constituted a pattern of illegal activity which violated Florida Statutes Section 772.102 and Section 772.11.

Respondents denied all allegations of wrongdoing and maintained that all securities recommended by them and purchased by Claimants were suitable for

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Claimants who were wealthy and sophisticated investors and business people seeking high income and growth. Respondents denied misrepresenting the risks of any investments and alleged that Claimants fully understood the risks associated with all transactions in their accounts. Respondents further alleged that: based on numerous conversations with Respondents, Claimants' admitted receipt of all prospectuses and offering memoranda, and Claimants' execution of various subscription agreements; Claimants' claims, which arose out of and/or related to transactions dating as far back as 1982, were barred by the six year eligibility rule set forth in Section 15 of the NASD Code of Arbitration Procedure, and by all applicable statutes of limitation; that Claimants' claims were barred by Florida's economic loss rule; Claimants' claim for attorneys' fees and punitive damages were barred by law. Respondents all raised the following affirmative defenses: waiver; ratification; estoppel; consent; laches; lack of proximate cause; assumption of risk; acquiescence; lack of intent to defraud; Claimants' lack of due diligence; Claimants' lack of reliance and contributory and/or comparative negligence. Respondents denied that Claimants suffered any damages as the proximate result of Respondents conduct, and alleged that Claimants' accounts profited over the ten years the accounts were maintained with Respondents.

RELIEF REQUESTED

Claimants requested damages of approximately 1,660,000.00 plus treble damages, punitive damages, attorneys' fees and costs.

Respondents requested dismissal of all claims.

OTHER ISSUES CONSIDERED & DECIDED

1. The above case summary of Respondents was submitted jointly by all three Respondents.
2. 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.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Bear Stearns, Interstate and Elgart, are found not liable and, therefore, all claims against them are hereby dismissed.

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2. Claimants' Claims for treble damages, punitive damages, attorneys' fees and costs are hereby denied.
3. All other claims are denied.

OTHER COSTS

The parties shall each bear all costs and expenses incurred by them in connection with this proceeding including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$12,900.00 (twenty-one (21) hearing sessions X \$600.00 + three pre-hearing conferences X \$300.00).

1. Claimants are hereby assessed Forum Fees in the amount of \$12,900.00 for which the NASD shall retain the \$600.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD by Claimants of \$12,300.00.
2. The NASD shall retain the non-refundable filing fee of \$250.00 previously paid by Claimants.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name	Public/Industry
<u>/s/</u>	
<u>James F. Turner, III</u>	Public/Chairperson
<u>/s/</u>	
<u>Beverly S. Gordon</u>	Industry/Panelist
<u>/s/</u>	
<u>Jean M. Lang</u>	Public/Panelist

Date of Decision: October 28, 1994