

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

---

In the Matter of the Arbitration Between

Name of Claimants

LaMar Dugan, Hollis B. Logan,  
Don W. Lieberknecht and Harry F. Chapman

and

92-00204

Name of Respondents

Bear, Stearns & Co., Inc. and  
Timothy J. Faust

---

**REPRESENTATION OF PARTIES**

Claimants LaMar Dugan, Hollis B. Logan, Don W. Lieberknecht and Harry F. Chapman were represented by Coyt Randal Johnston, Esq. of Johnston & Budner, Dallas, Texas.

Respondent Bear, Stearns & Co., Inc. was represented by Retta A. Miller, Esq. of Jackson & Walker, L.L.P., Dallas, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 21, 1992. Submission Agreements of Claimants LaMar Dugan, Don W. Lieberknecht and Harry F. Chapman were signed on January 9, 1992. Submission Agreement of Hollis B. Logan was signed on January 10, 1992.

Statement of Answer of Respondent Bear, Stearns & Co., Inc. was filed on or about March 25, 1992. Supplemental Answer of Respondent Bear Stearns & Co., Inc. was filed on or about December 31, 1992. Second Supplemental Answer of Respondent Bear Stearns & Co., Inc. was filed on or about January 20, 1993. Submission Agreement of Respondent Bear, Stearns & Co., Inc. was signed on March 24, 1992 by Raymond L. Aronson.

**HEARING INFORMATION**

The hearing was held on Thursday, January 21, 1993 for two (2) sessions and Friday, January 22, 1993 for three (3) sessions in Dallas, Texas for a total of five (5) sessions.

### **CASE SUMMARY**

Claimants LaMar Dugan, Hollis B. Logan, Don W. Lieberknecht and Harry F. Chapman ("Claimants") alleged that Respondent Timothy J. Faust ("Faust") gave them misleading and false information to persuade them to purchase AMR stock. Claimants specifically alleged that they were advised not to sell their interests after Respondent Bear Stearns and Donald Trump had decided to abandon their efforts to acquire the stock, being told that Mr. Trump was still interested in acquiring AMR. Claimants allege that the actions of Respondents constituted violations of various state and federal securities laws as well as the rules and regulations governing the conduct of brokers of the various exchanges and the National Association of Securities Dealers, Inc. in addition to breach of fiduciary duty.

Respondent Bear Stearns & Co., Inc. ("Bear Stearns") denied the allegations set forth in the Statement of Claim. Bear Stearns specifically stated that Claimants fully understood and appreciated the fact that the AMR investment was speculative based upon a highly publicized takeover offer. Bear Stearns also stated that the Claimants were not novices to the stock market, that in fact each had prior experience and each understood that the risks involved in this transaction were offset by the fact that AMR is a leader in the airline industry and was recommended by many analysts on its fundamental merits. Bear Stearns also stated that it never acted as a finance advisor to Mr. Trump in his takeover bid for AMR and therefore never had possession of inside information regarding his intentions that it could share with the Claimants. Bear Stearns further stated that even if it did have information, it could share that information with the Claimants since it would be a violation of Federal law to disclose or discuss information concerning another client's account.

### **RELIEF REQUESTED**

Claimants requested an award in the total amount of \$158,828.92 in actual damages. Specifically, J. LaMar Dugan requested \$69,327.37, Hollis B. Logan requested \$31,106.54, Harry B. Chapman requested \$45,253.68, and Don W. Lieberknecht requested \$13,141.33. Claimants also requested punitive damages in the amount the arbitrators deem just and equitable, costs, including attorney's fees, disbursements, expenses, post-award interest on all such sums as allowed by law, and such other relief as the arbitrators deem just and proper. At the hearing of this matter, Claimants reduced their request to a total of \$117,324.00. Specifically, J. LaMar Dugan requested \$51,043.00, Hollis B. Logan requested \$10,574.00, Harry B. Chapman requested \$42,941.00, and Don W. Lieberknecht requested \$12,766.00.

Respondent Bear Stearns & Co., Inc. requested that the claims asserted in this matter be dismissed and that costs be assessed against the Claimants.

**OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made on behalf of the Claimant, the panel could not determine that Respondent Timothy J. Faust had been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the NASD Code of Arbitration Procedure (the "Code"). The panel also could not determine that Respondent Timothy J. Faust had received due notice of the hearing as required under Section 26 of the Code and that arbitration of the matter would proceed pursuant to Section 29 of the Code.

Respondent Timothy J. Faust did not file with the NASD a properly executed submission agreement. Respondent Timothy J. Faust is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

The parties agreed to dismiss claims asserted against Respondent Timothy J. Faust.

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 original(s) remain on file with the NASD.

**FINDINGS OF FACT**

The undersigned arbitrators make the following Findings of Fact:

1. Timothy J. Faust made certain false representations of activity by Bear, Stearns & Co., Inc. and its management in AMR securities to the claimants; such false representations are found to be an actual fraud.
2. Timothy J. Faust was an employee of Bear, Stearns & Co., Inc. during the time the false representations were made.
3. No other employee of Bear, Stearns & Co., Inc. acted improperly.
4. Had the parties not agreed to dismiss Timothy J. Faust from this action, the undersigned arbitrators would have found actual and punitive damages against Timothy J. Faust on behalf of claimants.

**AWARD**

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

1. Respondent Bear, Stearns & Co., Inc. shall be and hereby is liable for and shall pay to the Claimants as follows:

Don Lieberknecht	\$ 3,100.00
LaMar Dugan	8,500.00
Hollis Logan	5,350.00
Harry Chapman	12,505.00

No damages were found for options transactions.

2. Interest is awarded on the above stated sums from and inclusive of January 1, 1990 until paid at the rate of 6% per annum. Interest is to be compounded monthly.
3. Respondent Bear, Stearns & Co., Inc. shall be and hereby is liable for and shall pay to the Claimants the sum of \$7,500.00 as attorney's fees.
4. Interest is awarded on the sum stated in paragraph 3 above beginning 30 (thirty) days after this award has been received by Respondent Bear, Stearns & Co., Inc. at the rate of 6% per annum. Interest is to be compounded monthly.
5. Respondent Bear, Stearns & Co., Inc. shall be and hereby is liable for and shall pay to the Claimants the sum of \$500.00 as costs and witness fees.
6. The claims asserted against Timothy J. Faust are reluctantly dismissed without prejudice.
7. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

#### **FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD on behalf of the Claimants. Claimants shall pay to the NASD the sum of \$1,125.00 as additional forum fees. Respondent Bear Stearns & Co., Inc. shall pay to the NASD the sum of \$1,875.00 as additional forum fees.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any.

N.A.S.D. Arbitration No. 92-00204  
Award Page 5 of 5

The NASD shall retain postponement fees totalling \$1,500.00 previously deposited with the NASD on behalf of the Claimants. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ A. James Lynn  
A. James Lynn  
Public Arbitrator, Presiding Chair

March 6, 1993

s/ James S. Raber, Esq.  
James S. Raber, Esq.  
Public Arbitrator

March 5, 1993

s/ Truman M. Smith  
Truman M. Smith  
Industry Arbitrator

March 5, 1993