

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Herschel E. Zirger

92-00423

Name of Respondents

Bear Stearns & Co., Inc.
Steven R. Sheresky

REPRESENTATION

For Claimant: Patrick Gaas, Esq. and Kathy Hix, Esq. of Brewer and Pritchard, Houston, Texas.

For Respondents: James C. Slaughter, Esq. of Fulbright and Jaworski, Houston, Texas.

CASE INFORMATION

Statement of Claim filed: February 4, 1992.

Claimant's Submission Agreement signed on: January 24, 1992.

Joint Statement of Answer filed by Respondents on: March 31, 1992.

Respondent, Bear Stearns & Co., Inc.'s and Steven Sheresky's Submission Agreements signed on: March 27, 1992.

HEARING INFORMATION

Hearing Date/Sessions: September 22, 1992 for two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant Herschel Zirger ("Zirger") alleged that he had an account with Respondent Bear Stearns & Co., Inc. ("Bear Stearns") which consisted of 1,890 shares of Archer Daniels - Midland Co. ("ADM") common stock valued at \$43,470.00, 700 shares of Burlington Resources, Inc. common stock valued at \$33,950.00, and 1,000 shares of Thiokol Corp. Del common stock valued at \$13,125.00. Zirger alleged that Respondent Steven Sheresky ("Sheresky") advised him to sell the ADM stock and purchase stock of Holiday Corporation (later, Promus). Zirger alleged that Sheresky assured him that the Holiday stock then selling at approximately \$71.25 per share would shortly rise to about \$119 per share. Zirger alleged that Bear Stearns issued a continued buying recommendation showing a total value of \$119 per share for Holiday Corporation. Zirger further alleged that Sheresky insisted that he sell the 1,890 shares of ADM and 630 shares of Thiokol to pay for the 1,000 shares Holiday stock. Zirger alleged that Sheresky urged him to buy an additional 500 shares despite his reluctance to go on margin.

Respondents Bear Stearns and Sheresky alleged that Sheresky never promised or guaranteed that the Holiday stock would rise in value to any price level, much less to \$119 per share. Sheresky alleged that he offered his good-faith opinion based on Bear Stearns's Research Department.

RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$59,850.41 calculated as follows: \$42,997.50 for the Archer-Daniels-Midland stock, plus \$8,670.00 for the Thiokol stock, plus \$29,225.00 for the Burlington Resources stock totaling \$80,892.40 minus \$28,548.40 for cash received at account closing, equaling \$52,244.10 for loss on value of stock, plus trading costs and margin in the amount of \$7,606.36, equaling the total loss of \$59,850.41. Claimant also requested punitive damages of \$179,551.23, attorney's fees, and costs.

Respondents requested: that the Statement of Claim be dismissed and that the costs of the proceeding be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim shall be and hereby is denied in its entirety; and,
2. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees, other than those specifically enumerated for herein.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions X \$750.00 = \$1,500.00 minus hearing session deposit of \$750.00 = net \$750.00 due.

Forum fees Assessed Against: Bear Stearns & Co., Inc. in the amount of \$750.00. The Respondent Bear Stearn shall also reimburse to the Claimant Herschel Zirger the amount of \$750.00 which was previously deposited with the NASD.

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

By The Arbitration Panel:

Dated:

September 22, 1992 s/s Michael E. McGown, Esq. Chairperson
Public Arbitrator

September 22, 1992 s/s Antoinette M. Romano
Public Arbitrator

September 22, 1992 s/s Ira H. Green
Industry Arbitrator

NASD Award served on: September 29, 1992