

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Timothy C. Wolfgang

92-01856

Name of Respondents

Bear Stearns & Company
Brad C. Brooks

REPRESENTATION

For Claimant Timothy C. Wolfgang ("Claimant"): Alan D. Wingfield, Esq. of the law firm of Mays & Valentine

For Respondents Bear Stearns & Company ("Bear Stearns") and Brad C. Brooks ("Brooks"): William C. Mallery, Associate Director, Legal Department of Bear Stearns.

CASE INFORMATION

Statement of Claim filed: June 2, 1992

Claimant's Submission Agreement signed on: May 1, 1992

Joint Statement of Answer filed by Respondents Bear Stearns and Brooks' (collectively referred to as "Respondents") on: July 23, 1992

Bear Stearn's Submission Agreement signed on: July 21, 1992

Brooks did not sign a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: May 19, 1993 - two sessions
 May 20, 1993 - two sessions

Hearing Location: Omni Hotel, Richmond, Virginia

CASE SUMMARY

Claimant alleged that Respondents conducted excessive trades in his account and churned his account for the primary purposes of generating commissions. Claimant alleged that Brooks effectuated unauthorized trades and discretion over Claimant's account without having been granted discretionary authority and without implementing the appropriate procedures for handling a discretionary account. Claimant alleged that these acts constituted breach of contract, breach of fiduciary duty, violations of federal and state securities laws and violated the rules and regulations of the National Association of Securities Dealers, Inc. ("NASD") and various exchanges. Claimant alleged that Respondents are liable to Claimant for all losses sustained by him as a result of Brooks' misconduct. Claimant alleged that Bear Stearns is liable for its failure to reasonably supervise or prevent fraudulent activities perpetrated by Brooks.

Respondents denied each and every allegations of wrongdoing and specifically maintained that Claimant's account was not churned as Claimant exercised control over his account. Respondents maintained that Claimant received confirmation of every trade in his account as well as monthly account statements. Respondents maintained that at no time over the period in which Claimant's account was maintained at Bear Stearns did Claimant complain that a particular transaction was unauthorized or that the trading in his account was not consistent with his investment objectives. Respondents maintained that by Claimant's silence, he ratified and approved every transaction. Respondents maintained that Claimant's failure to protest or take action to mitigate potential damages deprived Respondents of an opportunity to take corrective action and Claimant is thus estopped from asserting the instant claim. Respondents maintained that Claimant stated that when he opened his Bear Stearns account, that his objective was to employ a more aggressive trading strategy. Respondents maintained, that in view of this fact, the activity in Claimant's account was consistent with Claimant's objectives.

RELIEF REQUESTED

Claimant at the hearing requested compensatory damages in the amount of no less than \$33,000; plus opportunity costs, disgorgement of commissions, plus Claimant's costs, expenses and disbursements, including reasonable attorneys' fees.

Respondents requested that the Claimant's claim be dismissed in its entirety and that all costs of this 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.

Pursuant to the by-laws of the NASD, the Panel determined that Brooks was required to submit

to this arbitration, notwithstanding his failure to execute a Submission Agreement. Therefore, Brooks is bound by the rulings and determinations of this Panel.

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. That Respondents Bear Stearns and Brooks are jointly and severally liable to the Claimant and shall pay to the Claimant the sum of THIRTY THREE THOUSAND TWO HUNDRED TWENTY-FIVE AND 00/100 DOLLARS (\$33,225); no prejudgment interest is awarded on this amount.
2. That all other requests for damages are denied in their entirety.
3. That the parties shall bear their respective costs and expenses, except as indicated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

4 hearing session x \$500 = \$2,000

Hearing session fees shall be equally assessed against the Claimant and the Respondents so that Claimant is assessed forum fees in the amount of \$1,000. Claimant, however, is entitled to offset this amount with his hearing session deposit of \$500 previously filed so that the amount due from Claimant is \$500.

Respondents are jointly and severally assessed forum fees in the amount of \$1,000.

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

Concurring Arbitrator's Signature
Name

Public/Industry

John W. Rader, Sr.
John W. Rader, Sr.

Industry Arbitrator

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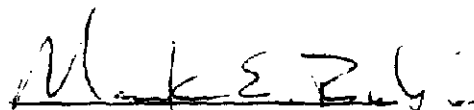
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Mark. E. Rubin, Esq.

Public Arbitrator

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Public/Industry


Richard Cocke, Esq. 7/2/93

Public Arbitrator