

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

**James D. Hilliard
Pauline M. Hilliard**

No. 92-02609

Name of Respondents

**Bear, Stearns & Co. Inc.
Charles Wright**

REPRESENTATION OF PARTIES

Claimant, James D. Hilliard appeared on behalf of himself and Pauline M. Hilliard.

For Respondents: Nicholas P. Iverone, Esq. of Bellows and Bellows, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: August 5, 1992.

Claimants' Submission Agreement signed on: July 28, 1992.

Joint Statement of Answer filed by Respondent, Bear, Stearns & Co. Inc. on: October 21, 1992.

Respondent Bear, Stearns & Co. Inc.'s Submission Agreement signed on: October 19, 1992.

Respondent Charles Wright's Submission Agreement signed on: September 21, 1992.

HEARING INFORMATION

Hearing date: March 11, 1993. One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants, James D. Hilliard and Pauline M. Hilliard ("Claimants") alleged a breach of fiduciary duty, failure to fully inform Claimants of the speculative nature of investments, unsuitability, and misrepresentations and omissions on the part of Respondents Bear, Stearns & Co. Inc. ("BSC") and Charles Wright ("Wright"). The allegations arose out of activity in Claimants account at BSC involving Teale Industries Limited stock. Claimants asserted that had they been fully informed by BSC or Wright of the highly speculative nature of Teal Industries Limited and the exchange that the stock had been listed on, Claimants would not have agreed to the purchase.

In their Answer, BSC and Wright denied each and every allegation contained in the Statement of Claim. In addition, BSC and Wright asserted the following affirmative defenses:

1. The Statement of Claim failed to state a cause of action for which relief may be granted.
2. The Claimants expressly authorized, directed, approved, consented to and ratified all transactions in the account including the purchase of the Teal shares.
3. The Claimants have by their conduct waived any and all claims against BSC and Wright.
4. The Claimants are estopped by their conduct from asserting any and all of the claims asserted in the Statement of Claim.
5. The Claimants' laches precludes recovery on any of the claims asserted in the Statement of Claim.
6. Neither BSC nor Wright are liable to the Claimants in any amount since at all times relevant hereto they acted properly, in good faith, and in compliance with all applicable securities laws and regulations.
7. The claims asserted in the Statement of Claim are barred by the applicable statutes of limitations.
8. The Claimants are precluded from any recovery against the BSC and Wright in that they failed to mitigate their damages.
9. The Claimants were fully informed of, and understood the risks associated with each of the securities purchased in their account at BSC, and the Claimants knowingly,

willingly, and voluntarily assumed those those risks.

RELIEF REQUESTED

Claimant requested an award of \$13,811.00, plus costs and attorneys' fees.

BSC and Wright requested that all claims asserted in the Statement of Claim be dismissed in their entirety and that the costs associated with this proceeding be assessed exclusively against the Claimants.

OTHER ISSUES CONSIDERED & DECIDED

At the close of Claimants' case in chief, Respondent made a Motion for a Directed Verdict based on Statute of Limitations grounds. After hearing argument from all parties present, and deliberation, the undersigned Chairman granted the Motion.

The parties have agreed that the Award in this matter may be executed by 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 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. On Motion by Respondents for Directed Verdict after the close of Claimants' case, based on Statute of Limitations Defense, Claimants', James D. Hilliard's and Pauline Hilliard's, claims are hereby denied and dismissed with prejudice.

OTHER COSTS

2. Each party shall pay its own costs, including attorneys' fees, except as set forth below.

FORUM FEES

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

1 hearing session X \$300.00 = \$300.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$100.00, and shall retain \$150.00 of the \$300.00 hearing session deposit previously paid to the NASD by the Claimants. \$150.00 shall be refunded to the Claimants.

Additional forum fees in the amount of \$150.00 are assessed against Respondent Bear Stearns & Co. Inc.

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

ARBITRATOR'S SIGNATURE

Dated:

March 11, 1993

/s/ G. Gale Roberson

G. Gale Roberson, Jr.

Presiding Chair

Public Arbitrator

Date of Service by the NASD:

March 11, 1993