

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Barry Kazatsky and Beverly Kalisher

92-04018

Name of Respondents

Bear Stearns & Company
Cowen & Company
Jerome S. Glickman

REPRESENTATION

For Claimants Barry Kazatsky ("Kazatsky") and Beverly Kalisher ("Kalisher"):
Mitchell H. Cobert, Esq.

For Respondents Bear Stearns & Company ("Bear Stearns") and Jerome S.
Glickman ("Glickman"): William C. Mallery, Esq. of Bear Stearns & Company.

For Respondent Cowen & Company ("Cowen"): Sean Reilly, Esq. of Cowen &
Company.

CASE INFORMATION

Statement of Claim filed on: November 27, 1992.

Claimants' Submission Agreements signed on: November 24, 1992.

Joint Statement of Answer filed by Respondents Bear Stearns & Company and
Jerome S. Glickman on: January 22, 1993.

Respondent Bear Stearns & Company's Submission Agreement signed on:
January 22, 1993.

Respondent Jerome S. Glickman's Submission Agreement signed on: March 5,
1993.

Joint Statement of Answer filed by Respondents Cowen & Company and Jerome S. Glickman on March 5, 1993.

Respondent Cowen & Company's Submission Agreement signed on: March 5, 1993.

HEARING INFORMATION

Hearing Dates/Sessions:	January 10, 1994	-	Two Sessions
	January 17, 1994	-	Two Sessions

Hearing Location: National Association of Securities Dealers, Inc. offices located in New York City, New York.

CASE SUMMARY

Claimants, Kazatsky and Kalisher, husband and wife, alleged that they had no sophisticated financial experience. Claimants alleged that they first met respondent Glickman in December, 1985 and began to utilize respondent Glickman's services as a registered representative in approximately February, 1986. Claimants alleged that respondent Glickman was employed as a registered representative of Respondent Bear Stearns & Co., Inc. from on or before February, 1986 to approximately February, 1988 at which time he became a registered representative of respondent Cowen & Company. The claimants further alleged that they opened a total of four accounts with Respondent Bear Stearns: an individual IRA retirement account for claimant Barry Kazatsky; an individual IRA retirement account for claimant Beverly Kalisher; a trust fund for the benefit of their minor son; and a joint "retirement" account. Claimants alleged that the two IRA accounts and the joint "retirement" account contained their entire life savings.

Claimants further alleged that respondent Glickman was informed by the claimants in clear and unequivocal terms that their investment objectives were preservation of principle and an increase in the value of the accounts. The claimants alleged that instead of recommending long term conservative investments suitable for their needs, Respondent Glickman induced the claimants to give him discretionary authority over all of their accounts by improperly claiming that such discretionary authority was customary and necessary for respondent Glickman to take advantage of the market while the claimants were out of town on business. Claimants further alleged that respondent Glickman then commenced to improperly trade and churn all four of the claimants accounts for no purpose other than his own self interest. Claimants alleged that on numerous occasions, the claimants complained to respondent Glickman of the decrease in the principle balance of the different accounts and that respondent Glickman always responded that their remaining portfolio, when sold, would restore the losses and provide a significant profit. Claimants alleged that they relied upon

respondent Glickman's misrepresentations to their detriment.

It was further alleged by the claimants that the claimants had transferred their accounts to respondent Cowen & Company in February, 1988, when respondent Glickman transferred his license from respondent Bear Stearns to respondent Cowen & Company.

Claimants alleged that respondent Glickman recommended unsuitable investments to the claimants. Claimants also alleged that while respondent Glickman emphasized the importance of capital preservation, liquidity, and income generation respondent Glickman knew, or should have known, that many of the investments he was recommending to the claimants had no such attributes. Claimant alleged that respondent Glickman breached his obligation to deal fairly with the claimants and willfully did not inform the claimants of the risks involved with the stocks he recommended.

Claimants alleged that respondents Bear Stearns and Cowen & Company, having hired and engaged respondent Glickman for the purpose of effectuating securities transactions, are liable to the claimants for the transactions complained of on the theory of respondeat superior.

Claimants alleged that in violation of the New Jersey Uniform Securities Laws, N.J.S.A. 49:3-52, 49:3-53, and 49:3-71, the respondents sold or proximately caused the sale of securities to the claimants by means of untrue statements of material facts, and by means of omitting to disclose facts which were necessary in order to make the statements made not misleading. Claimants further alleged that respondents also utilized fraudulent and manipulative devices to effectuate the sale in violation of the statutes.

Claimants alleged that they executed new account forms on or before the dates on which the relevant trading took place and that these new account forms were valid contracts between the parties which expressly, and impliedly, obligated the respondents to a certain standard of conduct, as regulated by the NASD. Claimants alleged that the conduct of the respondents violated the standard of conduct and constituted a breach of contract on the part of the respondents. Claimants further alleged that the respondents were required to deal fairly with the claimants and that the conduct of the respondents constituted a breach of their fiduciary duty by recommending unsuitable and inappropriate investments to the claimants; the conduct of the respondents constituted a deviation from the accepted standard of care of persons acting as financial advisors and/or sellers of securities and as a result of the negligence of said respondents, claimants have suffered damages.

Claimants alleged that the respondents violated the Rules of Fair Practice of the NASD, that the respondents engaged in excessive trading of securities for the sole purpose of generating unreasonable and inflated commissions and that the

churning of claimants accounts was fraudulent and in violation of state and federal securities laws. Claimants further alleged that the wrongful and illegal conduct of the respondents constituted common law fraud on the part of the respondents; that as an integral part of the scheme to deceive and defraud the claimant in connection with the sale of the investments, respondents intentionally and with reckless disregard used and employed devices, schemes and artifices to defraud and engaged in acts, practices and courses of business which operated as a fraud and deceit upon the claimants in violation of Section 10(b) of the 1934 act and Rule 10(b)-5.

Respondents Bear Stearns and Glickman requested that the claims asserted against them in the statement of claim be dismissed.

Respondents Bear Stearns and Glickman maintained that the claimants opened the four accounts with the respondent firm in November, 1985. They further maintained that the claimants provided the respondents with information regarding their various securities holdings already owned by the claimants and that respondent Glickman prepared a listing of mutual funds which claimants already owned, which respondent Glickman understood to be funds in addition to the monies that they deposited in their Bear Stearns accounts. Respondents Bear Stearns and Glickman also maintained that claimants advised respondent Glickman that they wanted to use the Bear Stearns joint account to seek trading profits and that the claimants fully understood the risks and costs of trading. Respondents Bear Stearns and Glickman maintained that claimants made it clear to respondent Glickman that the funds in this account were not vital to their daily needs.

Further, Respondents Bear Stearns and Glickman maintained that all transactions in claimants accounts were specifically authorized by claimants and, for each transaction, claimants received a confirmation statement, advising the claimants of the essential details of the transaction. They further maintained that claimants received a regular monthly statement and that claimants signed a customer agreement which authorized trading on margin and a truth-in-lending statement.

Respondents Bear Stearns and Glickman maintained that in March of 1986, in the course of a routine account review, claimants were sent a letter from respondent Glickman's manager alerting the claimants of the risks they may be undertaking and seeking assurance from the claimants that the trading volume in the claimants' accounts was consistent with claimants investment objectives. Additionally, Respondents Bear Stearns and Glickman maintained that claimant Kalisher signed this letter and returned it to Bear Stearns, acknowledging the accuracy of its contents. Respondent Bear Stearns further maintained that for the entire time claimants maintained accounts at Bear Stearns, claimants never contacted anyone at Bear Stearns to question any transaction or complain about the handling of their account.

Respondents Bear Stearns and Glickman maintained that all trading in the account

was consistent with claimants' investment objectives of earning trading profits and in view of this objective, the trading in the accounts was not excessive. Respondents Bear Stearns and Glickman further maintained that claimants were always in control of the activity in the account and, in certain instances, purchased or sold securities on an unsolicited basis.

Respondents Cowen & Company and Glickman denied the allegations contained in the statement of claim and maintained that the claimants failed to recite any facts which might specify the basis of their claims against these respondents.

Respondents Cowen & Company and Glickman further maintained that respondent Glickman was employed by Cowen & Company as a registered representative from January 13, 1988 through March 9, 1990. Respondents maintained that after respondent Glickman resigned from Bear Stearns to accept employment at Cowen & Company, claimants subsequently transferred their accounts to Cowen & Company.

Further, respondents maintained that the claimants had executed both a joint account agreement and a margin agreement as well as IRA account agreements and that at no time after claimants transferred their accounts to Cowen & Company did the claimants indicate a change in their investment objectives for the joint account.

In addition, respondents Cowen & Company and Glickman maintained that respondent Glickman regularly and routinely discussed the activity in the accounts with claimants during the period that the accounts were maintained at Cowen & Company. Respondents denied that the claimants gave Glickman discretionary trading authority over their accounts while the accounts were serviced at Cowen & Company. Respondents maintained that claimants did not execute a Discretionary Trading Authorization form for the accounts, as would be required for respondent Glickman to exercise discretion over the claimants accounts and further maintained that all transactions in the accounts were specifically authorized by the claimants. Respondents maintained that Cowen & Company sent a confirmation of each and every transaction promptly after each trade, and monthly account statements were sent to claimants promptly at the end of each month. Respondents Cowen & Company and Glickman maintained that they never received either a written or oral complaint by claimants concerning activity in claimants accounts at Cowen & Company.

Respondents maintained that the elements for establishing a claim of churning were not met by the claimants and therefore, requested that claimants claim of churning be denied. Respondents further maintained that claimants failed to set forth any factual basis to support the claims of breach of contract, breach of fiduciary duty, negligence and fraud. Further, respondents Cowen & Company and Glickman denied allegations of violations of the NASD's Rules of Fair Practice and maintained that violations of the various self-regulatory

organizations' rules and regulations do not give rise to a private right of action for customers such as the claimants.

Respondents Cowen & Company and Glickman requested that the claim against Cowen & Company for violations of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10(b)-5 be dismissed as defective for failure to state the specific acts which constitute the alleged fraud. Additionally, Respondents Cowen & Company and Glickman maintained that the claims alleged on the basis of New Jersey law must be denied since the applicable jurisdiction with regard to this proceeding is New York.

RELIEF REQUESTED

Claimants requested an award against the respondents, jointly and severally, for the following: (a) \$55,000.00 plus interest and penalties; (b) compensatory damages; (c) punitive damages; (d) losses incurred from churning; (e) interest at the lawful rate of 12% from the time of each investment; (f) counsel fees and costs of the proceedings; and (g) for such other and further relief as the arbitrators may deem fair and just.

Respondents Bear Stearns and Glickman requested that the statement of claim be dismissed and the costs of this proceeding assessed against claimants.

Respondents Cowen & Company and Glickman requested that the arbitrators dismiss the statement of claim in its entirety and each and every claim contained therein, award respondents the costs of this proceeding, including reasonable attorneys' fees, and make such other award as shall be just and equitable.

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.

Claimants advised that panel that they were withdrawing all claims relating to respondent Cowen & Company, with prejudice. They further advised the panel that they were withdrawing all claims relating to respondent Jerome Glickman, with prejudice, for the period of time that Glickman was registered with respondent Cowen & Company.

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. All claims against respondents Bear Stearns and Glickman be and hereby are dismissed in all respects.
2. Claimants request for punitive damages is denied.
3. Each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

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

Non-refundable filing fee	= \$ 150.00
Hearing Session Deposit:	= \$ 500.00
4 sessions x 500 = \$2000 minus \$500 hearing session deposit	= \$1500.00
TOTAL FORUM FEES ASSESSED	= \$2150.00


Forum fees Assessed Against:

Forum fees are assessed against Claimants for a total of \$2150.00 minus \$650.00 previously deposited with the NASD. The Claimants be and hereby are liable and shall pay to the NASD the sum of \$1500.00.

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

Concurring Arbitrators' Signatures

Name


Pamela H. Roderick
Public Arbitrator

Date of Decision: March 1, 1994

STATE OF NEW YORK
COUNTY OF ~~NEW YORK~~ *Kings*

On this *13* day of February, 1994, before me personally appeared *PAMELA*
RODERICK known to me to be the individual described in and who executed the
foregoing instrument and duly acknowledged to me that he/she executed the same.

Raymond H. H. H. H.

Notary Public, State of New York
No. 24-05610 (Queens Kings Co.)
Commission Expires March 31, 1995

1995

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

Concurring Arbitrators' Signatures

Name

John A. Belash
John Belash, Esq.
Industry Arbitrator

Date of Decision: March 1, 1994

STATE OF NEW YORK
COUNTY OF NEW YORK

On this 10 day of February, 1994, before me personally appeared John
DELUCA known to me to be the individual described in and who executed the
foregoing instrument and duly acknowledged to me that he/she executed the same.

Deborah A. DeJesus

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996

STATE OF NEW YORK
COUNTY OF NEW YORK

92-4018

On this 17th day of February, 1994, before me personally appeared Cynthia
Boye known to me to be the individual described in and who executed the
foregoing instrument and duly acknowledged to me that he/she executed the same.

Cynthia Boye

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996

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

Concurring Arbitrators' Signatures

Name


Cynthia Boyce, Esq.

Chairperson - Public Arbitrator

Date of Decision: March 1, 1994