

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Diann Cook

93-00627

Name of Respondents

Bear Stearns & Co. and Martin Flanagan

REPRESENTATION OF PARTIES

For Claimant, Diann Cook, at the hearing: Peter B. Shaeffer, Esq., Chicago, Illinois.

For Respondent, Bear Stearns & Co. at the hearing: Nick Iavarone, Esq. of Bellows and Bellows, Chicago, Illinois. For Respondent, Martin Flanagan at the hearing: Pro Se.

CASE INFORMATION

Statement of Claim filed: February 18, 1993. Claimants' Submission Agreement signed on: February 3, 1993.

Joint Statement of Answer filed by Respondents, Bear Stearns & Co. and Martin Flanagan, on: May 28, 1993. Respondent, Bear Stearns & Co.'s Submission Agreement signed on: May 27, 1993. Respondent, Martin Flanagan's Submission Agreement signed on: May 29, 1993.

HEARING INFORMATION

Hearing date: January 25, 1994 for two (2) sessions;
January 26, 1994 for two (2) sessions;
February 7, 1994 for two (2) sessions;

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Diann Cook ("Cook") alleged that Respondents Bear Stearns & Co. ("Bear Stearns") and Martin Flanagan ("Flanagan") churned her account held with Bear Stearns. Cook also alleged that they recommended and purchased unsuitable investments such as options and other speculative securities for her account and on occasion, effected the transactions without

her prior knowledge or consent. Cook also alleged that Bear Stearns and Flanagan engaged in breach of contract, breach of fiduciary duty, and committed fraud.

Respondents, Bear Stearns and Flanagan, in their joint Statement of Answer, denied the allegations set forth in the Statement of Claim. Bear Stearns and Flanagan stated that Cook was fully aware of the risks relating to each and every transaction effected in her account and expressly authorized each and every trade executed in her account. Bear Stearns and Flanagan also stated that Cook was fully disclosed of the risks associated with option trading and shortly thereafter, executed an Option Account Agreement.

RELIEF REQUESTED

For the claim of churning, claimant requested an award in the amount of the commissions, mark-ups and mark-downs charged to her account plus the margin costs all of which are in the approximate amount of \$22,533.00, plus her out-of-pocket losses experienced during the period when her account was "churned" in the approximate amount of \$20,449.00, plus "lost-opportunity" interest in an amount determined based upon the standard of prudent investments, plus attorney's fees under the Illinois Securities Act, plus the costs and expenses of the arbitration plus such other and further relief as the panel deems just and proper. For the claims for Breach of Contract, Breach of Fiduciary Duty, and Fraud, claimant requested damages in the amount of her out-of-pocket losses in the approximate amount of \$42,982.00, plus interest.

Respondents requested that each and every claim asserted in this proceeding be dismissed in its entirety and that the fees, costs and expenses of the arbitration be assessed entirely against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties present at the hearing 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Bear Stearns and Martin Flanagan shall be and hereby are jointly and severally liable for, and shall pay to the Claimant, Diann Cook, damages in the amount of Eleven Thousand Dollars and No Cents (\$11,000.00);

2. Claimant's request for interest is denied:

3. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated for under Forum Fees below.

FORUM FEES

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

6 hearing sessions X \$400.00 = \$2400.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$120.00, and shall retain the hearing session deposit in the amount of \$400.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$2000.00 are assessed against Claimant, Diann Cook in the amount of \$1000.00 and against Respondents, Bear Stearns and Co. and Martin Flanagan, jointly and severally, in the amount of \$1000.00.

Additional Forum Fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

3-29-94

s/s William H. Tobin, Esq.
William H. Tobin, Esq.
Presiding, Public Arbitrator

4-4-94

s/s Stephen C. Esposito, Esq.
Stephen C. Esposito, Esq.
Public Arbitrator

4-4-94

s/s Donald Whiteman
Donald Whiteman
Industry Arbitrator

Date Award Served By The NASD: 4-13-94