

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

PUBLIC

Name of Claimant(s)

Dong Uk Lee

93-00954

Name of Respondent(s)

Bear Stearns & Company, Inc.
Oppenheimer & Co., Inc.

v.

Patrick M. Riley

REPRESENTATION

For Claimant Dong Uk Lee: Jonathan M. Goidel, Esq. of the law firm of Goidel and Siegel, New York, NY.

For Respondent Bear Stearns and Company, Inc.: William C. Mallery, Esq., in-house counsel.

For Respondent Oppenheimer and Company, Inc.: Joseph C. Pickard, Esq., in-house counsel.

Third Party Respondent Patrick M. Riley did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed: March 12, 1993.

Claimant's Submission Agreement signed on: February 24, 1993.

Statement of Answer filed by Respondent Oppenheimer and Company, Inc. on: June 4, 1993.

Amended Answer to the Statement of Claim filed by Oppenheimer and Company, Inc. on: June 8, 1993.

Statement of Answer and Cross-Claim filed by Respondent Bear Stearns and Company, Inc. on: May 13, 1993.

Answer of Respondent Oppenheimer and Company, Inc. to the Cross-Claim of Bear Stearns and Company, Inc. and Cross-Claim Against Bear Stearns and Company, Inc. filed: November 2, 1993.

Letter Motion to Bar the Cross-Claim of Oppenheimer and Company, Inc. dated November 5, 1993.

Letter dated June 21, 1993 from Bear Stearns and Company, Inc. withdrawing its cross-claim without prejudice.

Respondent Oppenheimer and Company, Inc.'s Submission Agreement signed on: May 13, 1993.

Respondent Bear Stearns and Company, Inc.'s Submission Agreement signed on: May 13, 1993.

Respondent Patrick M. Riley did not file an Answer or execute a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing conference: February 10, 1994

Hearing Dates/Sessions: February 23, 1994 / One Session
May 17, 1994 / One Session

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimant alleged on or about March 11, 1987 Claimant opened an account with Bear Stearns and Company, Inc. and Bear Stearns and Company, Inc. assigned Patrick M. Riley ("Riley") to maintain and oversee the account. Claimant further alleged on or about March 1988 Claimant advised Riley he would be leaving the U.S. for Korea for an indefinite period of time and requested that all transactions in his account be confirmed with him in Korea. Claimant further alleged in March 1988 Riley left the employment of Bear Stearns and Company, Inc. ("Bear Stearns") and accepted employment with Respondent Oppenheimer & Company,

Inc. ("Oppenheimer") and during the period from about June 2 through June 16, 1988 Riley forged Lee's signature on numerous documents with the intention of effecting a transfer of the securities in the Bear Stearns account into an account at Oppenheimer and Company, Inc. and in July 1988 without any authority from Claimant to do so, Bear Stearns did transfer all of the securities into the account at Oppenheimer. Claimant further alleged from July 1988 through August 1988 Respondent Riley effected numerous transactions in the Oppenheimer and Company, Inc. account without any authorization to do so generating brokerage commissions and other fees and dissipating the market value of the account from \$71,000.00 to \$18,900.59. Claimant further alleged in August 1988 Riley left the employ of Oppenheimer and Company, Inc. and with no authority to do so requested Oppenheimer issue a check to the order of Lee for the full market value of the securities remaining in the account, forged Lee's endorsement and deposited the proceeds into JMH Enterprises' account at Security Pacific National Bank, Riley's new employer. Claimant further alleged on or about April 1990 Lee returned to the U.S. and was advised Riley had left Bear Stearns and Company, Inc.'s employ and he demanded the return to him of the securities held in the Bear Stearns account and Bear Stearns did not comply and, thereafter Lee was advised by Oppenheimer and Company, Inc. that the balance of his account was zero. Claimant further alleged Respondents breached their fiduciary duty owed to him; the Respondents were negligent and acted in a fraudulent manner.

Respondent Bear Stearns and Company, Inc. maintained Claimant has not alleged that any of the activity in the account was improper while the account remained at Bear Stearns and Company, Inc. nor does Claimant allege that the account suffered any damages while at Bear Stearns and Company, Inc. Respondent Bear Stearns and Company, Inc. further maintained in transferring the account, Bear Stearns relied on Oppenheimer and Company, Inc. and upon industry practice for assurance that the transfer form was properly prepared, authorized and signed and the statement was forwarded to Claimant at his Chicago address which is the address which Claimant had given to Bear Stearns and Company, Inc. when he opened the account and Bear Stearns reasonably relied on the absence of any objection from Claimant as evidence the transfer was in accordance with his instructions and Claimant deprived Bear Stearns and Oppenheimer of any opportunity to take corrective action or mitigate potential damage by his delay in taking action.

Respondent Bear Stearns and Company, Inc. asserted a cross-claim against Oppenheimer alleging that all of the actions that allegedly resulted in damage to Claimant occurred while the account was at Oppenheimer and Company, Inc. and

requested that Oppenheimer be ordered to indemnify and hold Bear Stearns harmless for any and all liability or, alternatively, that Oppenheimer be ordered to contribute to any such liability, costs or fees assessed against Bear Stearns and Company, Inc.

In response to the cross-claim Oppenheimer maintained Bear Stearns and Company, Inc. had an obligation to verify the signature on the transfer documentation and Oppenheimer relied on Bear Stearns in so accepting Claimants account and based on Bear Stearn's failure to act in conformity with the rules and practices governing the transfer of accounts and but for Bear Stearns' negligence the account would not have been transferred and Respondent Oppenheimer and Company, Inc. asserted a cross-claim against Bear Stearns and Company, Inc. based on these facts requesting that in the event it is found liable to Claimant in any amount that Bear Stearns and Company, Inc. be liable for indemnification/contribution for any such liability, costs or fees.

In response Bear Stearns and Company, Inc. requested that the cross-claim be stricken as untimely.

In response to the Statement of Claim Respondent Oppenheimer and Company, Inc. maintained it is inconceivable that Claimant having previously at Bear Stearns given Riley trading authorization did not inquire about the status of his account for over 2 years and Oppenheimer's records reflect that Claimant's monthly statements and confirmations were sent to Claimant's address in Chicago, IL and Oppenheimer has no record that Claimant was not residing at that address or wanted his statements sent to Korea and Claimant had an obligation to have his mail forwarded and Oppenheimer and Company, Inc. cannot be responsible for Claimant's failure to act in a reasonably prudent manner and Claimant failed to mitigate his damages. Respondent Oppenheimer and Company, Inc. further maintained it did not know nor should it have known that former account executive Patrick Riley forged Claimant's signature on the transfer documentation or on a check and thereafter converted the funds to his own personal use.

Respondent Oppenheimer and Company asserted a third party claim against Respondent Patrick Riley alleging that his conduct which was beyond the scope of his employment was the cause of any of Claimant's alleged losses and in the event that Oppenheimer is found liable to Claimant in whole or in part that third party Respondent Riley be ordered to indemnify Oppenheimer and/or contribute to any such award.

Respondent Patrick M. Riley did not file a response.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Bear Stearns and Company, Inc. asserted a motion to dismiss alleging that:

1. on February 10, 1994, a discovery conference was held and Chairman Vallario ordered Claimant to produce documents responsive to the remaining discovery requests of Bear Stearns by February 17, 1994 at 2 p.m. and Claimant did not produce documents as ordered by the Chairman at that time, nor did Claimant comply with Section 32(c) of the NASD Arbitration Code of Arbitration Procedure requiring a prehearing exchange of documents and witness lists. In addition, the Respondent Bear Stearns and Company, Inc. alleged at the first hearing session of the arbitration, Claimant requested an adjournment, which was granted until May 15 and 16, 1994 and Claimant was again ordered to produce discovery documents, this time by May 2, 1994;
2. as of May 3, 1994, Claimant had produced no documents and was again in violation of the order of the Arbitrators; and accordingly, Bear Stearns requested that the claim be dismissed, that Bear Stearns be awarded its costs and that all costs of the proceeding be assessed against Claimant.

The Claimant's counsel did not attend the hearing on May 15, 1994 but had informed the NASD staff prior to the hearing that he would not object to the motion to dismiss as he was unable to contact the Claimant.

RELIEF REQUESTED

Claimant requested damages of \$79,019.00 for the value of the account plus interest, costs and disbursements. Claimant further requested damages representing commissions and other monies received by or paid to Oppenheimer and Company, Inc. in connection with trades transacted through the account at Oppenheimer and such other and further relief as seems just and proper.

Respondent Bear Stearns and Company, Inc. requested a dismissal of the Statement of Claim and cross-claim of Oppenheimer and Company, Inc. or, in the alternative, that its cross-claim be granted in full and that the costs of the proceeding be assessed against Claimant and/or Oppenheimer and Company, Inc.

Respondent Oppenheimer and Company, Inc. requested that the claim and cross-claim of Bear Stearns and Company, Inc. be dismissed and that costs and disbursements be assessed against Claimant, or in the alternative, that its third party claim and/or its cross claim be granted and that costs and disbursements be assessed against Riley and/or Bear Stearns and Company, Inc.

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 Respondent Bear Stearns and Company, Inc.'s motion to dismiss the claims against it with prejudice is granted.
2. The Claimant's counsel informed the arbitration panel that it had entered into a settlement agreement with Respondent Oppenheimer and Company, Inc.
3. Respondent Oppenheimer and Company, Inc.'s counsel informed the arbitration panel that it was dismissing without prejudice the claims against third party Respondent Patrick Riley.
4. Counsel for Respondents Oppenheimer and Company, Inc. and Bear Stearns and Company, Inc. informed the arbitration panel that they were dismissing without prejudice the cross-claims asserted against each other.
5. The Claimant be and hereby is liable and shall pay to the NASD the sum of \$500.00 representing the postponement fee for hearings adjourned on February 23 and February 24, 1994.

FORUM FEES

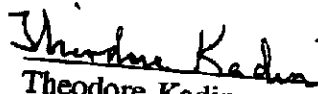
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1 pre-hearing conference (\$300.00) + 2 sessions (\$500.00 x 2) =
\$1,300.00 less Respondent Bear Stearns and Company, Inc. hearing
session deposit less Respondent Oppenheimer and Company, Inc.'s hearing
session deposit less Claimant's hearing session deposit = net \$0.00 due.

ARBITRATORS' SIGNATURE



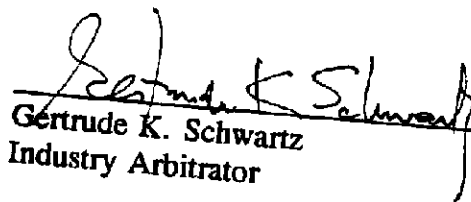
Richard W. Vallario, Esq.
Public Arbitrator



Theodore Kadin
Public Arbitrator



MARIE J. PANELLA
Notary Public, State of New York
No. 60-6736977
Qualified in Westchester County
Certified in Westchester County 4/4
Commission Expires August 30, 19.....



Gertrude K. Schwartz
Industry Arbitrator

Date of Decision: June 27, 1994

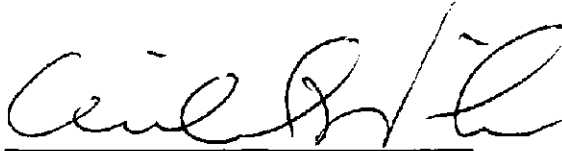
Award #93-00954

STATE OF: NEW JERSEY

SS:

COUNTY OF: ESSEX

On this 13 day of JUNE, 1994, before me personally appeared Richard W. Vallario, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



MICHAEL J. VIOLA, ESQ.
ATTORNEY AT LAW
STATE OF NEW JERSEY

STATE OF: New York

SS:

COUNTY OF: Westchester

On this 17th day of June, 1994, before me personally appeared Theodore Kadin known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



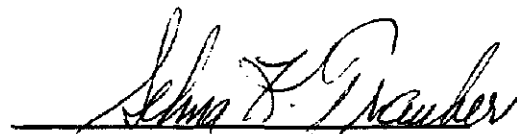
MARIE J. PANELLA
Notary Public, State of New York
No. 60-4700977
Qualified in Westchester County
Commission Expires August 30, 1994

STATE OF: New York

SS:

COUNTY OF: KINGS

On this 23 day of June, 1994, before me personally appeared Gertrude K. Schwartz known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.



SELMA K. TRAUBER
Notary Public, State of New York
No. 24-8372320
Qualified in Kings County
Commission Expires March 30, 1995
DEC. 31, 1994