

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Malcolm E. Erickson

93-01462

Name of Respondents

Lew Leiberbaum & Co., Inc., Bear Stearns Securities Corp., and Howard Hockman.

REPRESENTATION OF PARTIES

For Claimant at the hearing: Pro Se:

For Respondents, Lew Leiberbaum & Co, Inc. and Bear Stearns Securities Corp., at the hearing: Jay Mark Israel, Esq. and Leonard A. Neuhaus, Esq. of Lew Leiberbaum & Co., Inc., Garden City, New York.

For Respondent, Howard Hockman, not present at the hearing: Pro Se.

CASE INFORMATION

Statement of Claim filed: April 12, 1993. Claimant's Submission Agreement signed: April 9, 1993.

Statement of Answer filed by Respondent, Lew Leiberbaum & Co., Inc.: July 2, 1993. Statement of Answer filed by Respondent, Bear Stearns Securities Corp.: July 2, 1993.

HEARING INFORMATION

Hearing date: April 20, 1994 for one (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Malcolm Erickson ("Erickson") alleges that Respondents, Lew Leiberbaum & Co, Inc. ("Leiberbaum"), Bear Stearns Securities Corp. ("Bear Stearns"), and Howard Hockman ("Hockman"), are liable to him for losses he incurred as a result of alleged misrepresentations in connection with his purchase of Future Medical Products, Inc. ("FMP") stock from Leiberbaum. Bear Stearns acted as a clearing broker. More specifically, Erickson alleges that Hockman, who was a broker at Leiberbaum, had "guaranteed" that the stock would be in "double digits," since it was on the verge of breakthroughs with an AIDS medication. Erickson alleges that the stock was not appropriate for one in his financial position and inexperience in investing.

Erickson also alleges that an unauthorized purchase of 1,000 shares of FMP stock in his account was not promptly "corrected" and that, as a result, 120 shares of his FMP stock were sold from his account, without his authorization, by Bear Stearns to make up a dollar deficiency caused by the unauthorized purchase.

Respondent Leiberbaum denies all liability to Erickson. Leiberbaum further alleges that the claim consists of mere allegations and that any loss suffered by Claimant derived from his own inaction.

Respondent Bear Stearns denies all liability to Erickson and that it performed only operational and clearing functions. Bear Stearns also alleges that it made no investment recommendations or representations to Claimant and had no responsibility to supervise Hockman.

RELIEF REQUESTED

Claimant initially requested that he be refunded the full purchase price paid for his FMP stock, in the amount of \$8,847.50, plus interest at 10% per annum and costs, as well as punitive damages, and he stated that he would then transfer his 2,000 shares to Leiberbaum. Shortly after filing his Statement of Claim, Claimant sold his 2,000 shares of FMP stock at a loss. Accordingly, he now demands reimbursement for his loss, rather than rescission.

Respondents Leiberbaum and Bear Stearns made a motion that the claim be dismissed for lack of proof of damages and asserted that all costs should be assessed against Claimant. Respondent Bear Stearns asserts that it was merely a clearing broker and therefore is not liable to Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file, the Arbitrator determined that Respondent Hockman had been properly served with the Statement of Claim pursuant to Section 13 and Section 25 of the NASD Code of Arbitration Procedure (the "Code"). The Arbitrator also determined that Respondent Hockman had received due notice of the hearing as required under Section 26 of the Code and that arbitration of the matter would proceed pursuant to Section 29 of the Code.

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 instance, the parties

have agreed to accept conformed copies of the Award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony, and the other evidence presented at the hearing, the undersigned Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents' motion to dismiss is denied;
2. Claimant's Statement of Claim is dismissed as to Respondent Bear Stearns;
3. Respondents Leiberbaum and Hockman are jointly and severally liable to Claimant in the amount of Four thousand, three hundred thirty dollars and no cents (\$4,330.00).
4. Claimant's claim for punitive damages is denied; and
5. Each of the parties shall bear his or its own costs and expenses other than those specifically enumerated under Forum Fees below.

FORUM FEES

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

one (1) hearing session x \$200 = \$200

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$75.00 and shall retain the hearing session deposit in the amount of \$200.00 previously paid to the NASD by Claimant.

By the Arbitrator:

Dated:

6/28/94



Samuel Weisbard, Esq.
Presiding, Public Arbitrator

Date of Service by the N.A.S.D.:

6-28-94