

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John Madonis

93-01912

Name of Respondents

Bear Stearns & Company
Kevin Charles Haag
Jack T. Bayer
Steven Benjamin Nakovich

REPRESENTATION

Claimant John Madonis was represented at the hearing by Peter J. Karabas, Esq. of Abramson & Fox, Chicago, Illinois.

Respondents Bear Stearns & Co., Inc., Jack T. Bayer, and Steven B. Nakovich were represented by Nicholas P. Iavarone, Esq. of Bellows & Bellows, Chicago, Illinois.

Respondent Kevin C. Haag was represented by Michael J. Barton, Esq. of Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on May 12, 1993. Claimant's Submission Agreement was signed on May 3, 1993.

Joint Statement of Answer was filed by Respondents, Bear Stearns & Co., Inc., Kevin C. Haag, Jack T. Bayer, and Steven B. Nakovich on August 10, 1993.

Respondent, Bear Stearns & Co., Inc.'s Submission Agreement was signed on August 10, 1993 by Mark E. Lehman, Senior Managing Director, Bear Stearns & Co., Inc. Respondent, Kevin C. Haag's Submission Agreement was signed on August 23, 1993. Respondent, Jack T. Bayer's Submission Agreement was signed on August 19, 1993. Respondent, Steven B. Nakovich's Submission Agreement was signed on August 19, 1993.

HEARING INFORMATION

The hearing was held in Chicago, Illinois on July 18, 1994 for one (1) session; September 8, 1994 for two (2) sessions; September 9, 1994 for two (2) sessions; September 12, 1994 for two (2) sessions; September 13, 1994 for two (2) sessions.

CASE SUMMARY

Claimant John Madonis ("Claimant") alleged that Respondents Kevin C. Haag ("Haag") and Jack T. Bayer ("Bayer"), while employed by or acting as an agent for Respondent Bear Stearns and Co., Inc. ("Bear Stearns"), placed Claimant's funds into securities which were unsuitable given his investment objectives, and furthermore, that Bear Stearns and Steven B. Nakovich ("Nakovich") failed in their duty to supervise both Haag and Bayer. The Claimant specifically alleged that:

1. Claimant first opened an account with Bear Stearns on January 6, 1992 with Bayer as his account executive; shortly thereafter, Claimant opened another account at Bear Stearns with Haag as his account executive. Both Bayer and Haag held themselves out as competent, experienced brokers who would invest Claimant's money in accordance with his investment objectives;
2. Claimant informed both account executives that his investment objectives were primarily safety of principle and income; Claimant wanted to use a recent worker's compensation award of \$320,000.00 to provide support for and to send his children to college given that his earnings were drastically reduced after an injury;
3. Bayer and Haag recommended and initially adhered to Claimant's conservative objectives; however, both Respondents departed significantly from Claimant's objectives and inappropriately placed his investment capital at risk by investing in speculative securities, most notably Centocor. Respondents also purchased securities on margin without consent of the Claimant;
4. As a result of the actions of Bayer and Haag, and the failure of Nakovich and Bear Stearns to properly supervise both men in the handling of Claimant's account, the Claimant suffered substantial losses.

Based on the above allegations, Claimant asserted claims for the violation of the NASD Rules of Fair Practice; breach of fiduciary duties to Claimant; negligence; common law fraud; and the violation of the Illinois Consumer Fraud Act.

Respondents denied the material allegations of the Statement of Claim, alleging that:

1. Claimant initially opened an account with Bear Stearns, using Bayer as his account executive; Claimant deposited \$215,485.00 in this account which was invested in a conservative and diversified portfolio consisting of quality, income-oriented preferred and common stock and an \$50,000.00 Treasury Note. Claimant later opened a second account, with Haag as his account executive, to pursue the more speculative goal of trading profits and investment growth.
2. All of the securities recommended to the Claimant were consistent with his stated investment objectives; after extensive research and discussion between Claimant and Haag regarding the health care company Centocor, Claimant purchased 1,000 shares of the company at \$57 per share in January 1992 for his second account. By April, the price of Centocor had fallen to the \$32 range, yet Claimant recommended that additional shares be purchased on margin to average down his overall cost per share. Claimant purchased 250 additional shares on April 2, 1992 at \$32 1/2 per share. Despite Haag's recommendation that the Centocor position be liquidated, Claimant continued to average down his position as the price of Centocor fell to \$18 1/2 (750 shares) and \$16.55 (500 shares); the first account continued to be invested in conservative investments;
3. Centocor was recommended by Haag in good-faith based upon extensive research which concluded that Centocor was an outstanding company with excellent growth potential. However, according to a class action lawsuit filed against Centocor and certain of its officers and directors, it appears that the company misled the Food and Drug Administration, the investing public, and the securities analysts who followed the company.
4. Claimant was fully aware of and approved the use of margin in his accounts as he raised the possibility of margin trading. Furthermore, Claimant executed a separate margin agreement for each of his accounts and received a Truth-In-Lending statement which fully explained the mechanics and costs of margin transactions.

RELIEF REQUESTED

Claimant requested entry of an award against Bear Stearns, Haag, Bayer and Nakovich for money lost on the investments; margin interest charged, a fair return on his original investment; punitive damages in the amount of \$250,000.00; plus attorney's fees, costs, and expenses.

Respondents requested that the Statement of Claim be dismissed in its entirety and that all Respondents be awarded all costs and attorney's fees that they have incurred in this matter.

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.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Bear Stearns and Co., Inc. and Kevin C. Haag are jointly and severally liable for and shall pay to the Claimant John Madonis, damages in the sum of Twenty-One Thousand Dollars (\$21,000.00);
2. Respondents Bear Stearns and Kevin Haag are jointly and severally liable for, and shall pay to the Claimant interest in the sum of Two Thousand Nine Hundred Seventy Seven Dollars and Forty Cents (\$2977.40);
3. All other claims asserted by the parties are denied and dismissed with prejudice;
4. Each of the parties shall bear their own costs and expenses including attorney's fees, other than those specifically enumerated for herein.

FORUM FEES

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

nine (9) hearing sessions x \$750.00 per session = \$6,750.00 minus the hearing session deposit of \$750 = net \$6000 due.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 non-refundable claim filing fee and the Hearing Session deposit of \$750.00 previously deposited by Claimant John Madonis. Claimant shall pay to the NASD additional forum fees in the sum of \$2625. Respondents, Bear Stearns and Kevin Haag, jointly and severally, shall pay to the NASD additional forum fees in the sum of \$3375.

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

By The Arbitration Panel:

Name	Date
s/s Joseph Kostner	November 10, 1994
<hr/> Joseph O. Kostner, Esq. Public Arbitrator Chairperson	<hr/>
s/s John K. Notz	November 15, 1994
<hr/> John K. Notz, Jr., Esq. Public Arbitrator	<hr/>
Ronald Peters	November 11, 1994
<hr/> Ronald C. Peters, CPA, CTA Industry Arbitrator	<hr/>

(For NASD Use Only)

Date of Decision: 11/16/94