

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Kenneth S. and Barbara B. Saywell

93-02410

Name of Respondent(s)

Bear Stearns & Company
Lawrence S. Rule

REPRESENTATION

For Claimants Kenneth S. Saywell and Barbara B. Saywell ("Claimants"):
Stephen M. Bales, Esq. of Ziegler, Metzger & Miller, Cleveland, Ohio.

For Respondents Bear Stearns & Company and Lawrence S. Rule: James M.
Hubbert, Esq. of Bear Stearns & Company, New York, New York.

CASE INFORMATION

Claimants' Statement of Claim filed: June 15, 1993.

Claimants' Submission Agreement signed on: June 10, 1993.

Statement of Answer filed by Respondents Bear Stearns & Company and
Lawrence S. Rule on: August 13, 1993.

Respondent Bear Stearns & Company's Submission Agreement signed on:
August 13, 1993.

Respondent, Lawrence S. Rule's Submission Agreement signed on: June 28,
1993.

HEARING INFORMATION

Hearing Dates/Sessions: May 18, 1994 / Two Sessions.

Hearing Location: NASD, Inc.
1350 Euclid Avenue, Suite 900
Renaissance Bldg. on Playhouse Square
Cleveland, OH 44135

CASE SUMMARY

Claimants alleged that on or about May 21, 1992 Claimant Kenneth S. Saywell opened an individual account at Respondent Bear Stearns & Company ("Bear Stearns") with Respondent Lawrence S. Rule ("Rule") as the account executive handling the account. Claimants further alleged that the individual account was intended to be a margin account. Claimants then alleged that on or about June 17, 1992 Claimants opened a joint account at Bear Stearns and that the joint account was not intended to be a margin account. Claimants further alleged that Claimant Kenneth S. Saywell had no prior experience nor knowledge of margin accounts and that Rule failed to adequately and completely explain to Claimant Kenneth S. Saywell the risks associated with a margin account or to determine whether a margin account was appropriate for Claimant Kenneth S. Saywell.

Claimants next alleged that on or about June 29, 1992 Respondents caused Claimants' entire portfolio at Dean Witter Reynolds to be transferred to Claimants' joint account at Bear Stearns and that without Claimants' authorization, Respondents liquidated the entire Dean Witter Reynolds portfolio. Claimants then alleged that Respondents used the sale proceeds to purchase, on margin, 2,900 shares of Stone Container Corp. in Claimants' joint account without Claimants' authorization.

Claimants alleged that as a result of the unauthorized sale of the Claimants' Dean Witter Reynolds portfolio and unauthorized purchase of Stone Container Corp. shares that Claimants incurred losses and commission fees.

Claimants further alleged that Bear Stearns was negligent in the selection, retention and or supervision of Rule and the accounts of the Claimants.

Respondents maintained that in or about May of 1992 Claimant Kenneth S. Saywell opened an individual account with Bear Stearns and that the account was a margin account. Respondents further maintained that in or about June of 1992 Claimants opened a joint account with Bear Stearns and Respondents denied that the joint account was not intended to be a margin account. Respondents denied that Rule failed to adequately and fully explained to Claimants the risks associated with margin trading and Respondents denied that Rule failed to determine whether margin trading was appropriate in light of Claimants' stated investment

objectives.

Respondents maintained that Claimant Kenneth S. Saywell described himself to Rule as an experienced and sophisticated investor who engaged in more aggressive and speculative investment opportunities. Respondents further maintained that the Claimants expressly and specifically authorized the transfer of Claimants' securities brokerage accounts from Dean Witter Reynolds and South Richmond Securities to Bear Stearns. Respondents further maintained that the securities positions transferred from Dean Witter Reynolds and South Richmond Securities were liquidated in accordance with the express and specific instructions of the Claimants. Respondents then maintained that the sale of the securities was confirmed to Claimants over the phone and in written confirmations and that Claimants did not object, dispute or complain about the sale upon receipt of the confirmations.

Respondents maintained that Rule contacted Kenneth S. Saywell and discussed the investment of the sale proceeds in Stone Container Corp. Respondents further maintained that Claimants expressly authorized the sale of the positions and the use of the sale proceeds to purchase 2,900 shares of Stone Container Corp. on margin. Respondents maintained that Rule fully and completely discussed with Claimants the use of margin in connection with the purchase of Stone Container Corp. shares and the risks associated with the purchase. Respondents further maintained that Claimants were fully aware of and understood the risks and willingly agreed to assume those risks.

Respondents maintained that it was not until the price of Stone Container Corp. had dropped substantially, and a portion of the position was liquidated to meet a margin maintenance call, that Claimant decided to sell the balance of the position. Respondents further maintained that Claimants were fully aware of the nature of the investment in Stone Container Corp. on margin and that Claimants willingly, readily and knowingly accepted those risks.

Respondents asserted the following affirmative defenses: The statement of claim failed to state a cause of action for which relief could be granted, any losses allegedly sustained by Claimants was the result of Claimants own conduct and or negligence, Claimants are precluded from recovery since they failed to mitigate damages allegedly sustained, Claimants were barred from recovery since at all times Respondents acted in good faith and in compliance with all applicable securities laws and regulations, Claimants were barred from recovery since they sustained no damages as a result of any act or omission on the part of Respondents, Claimants were precluded from recovery since they knowingly and voluntarily assumed the risks of investing in the securities market, Claimants expressly ordered, approved, authorized and ratified each and every transaction

complained of in the Statement of Claim. Bear Stearns at all times maintained an adequate and reasonable system of supervision over its employees, including Rule, and the losses allegedly sustained by Claimants were the result of market movement and not any act or negligence on the part of Respondents.

RELIEF REQUESTED

Claimants requested: An award in the amount of \$60,000 against Respondents jointly and severally together with Claimants' costs, arbitration fees, hearing fees, advancements, expenses and any further relief deemed just and equitable.

Respondents requested: The claims asserted by Claimants be dismissed in their entirety and the costs of the proceeding including reasonable attorneys' fees be assessed against Claimants.

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:

Judgment in favor of Respondents Bear Stearns & Company and Lawrence Rule.

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.

2 sessions X \$500 = \$1,000 minus hearing session deposit of \$500 = net \$500 due.

Forum fees Assessed Against:

1. Claimants are assessed \$500 which represents one-half of the balance of the forum fees assessed less the hearing session deposit paid of \$500 leaving a balance due of \$0.
2. Respondents are assessed \$500 which represents one-half of the balance of the forum fees assessed. Respondents are hereby liable,

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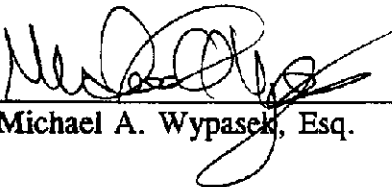
jointly and severally and shall pay to the NASD \$500.

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

Concurring Arbitrators' Signatures

Name

Public Chairman



Michael A. Wypasek, Esq.

Name

Industry Panelist

John N. Stamatis

Name

Public Panelist

Mara K. Cole

Date of Decision: August 22, 1994

Concurring Arbitrators' Signatures

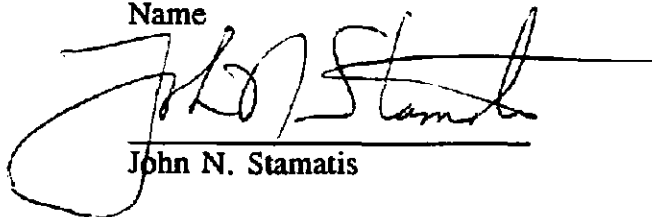
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