

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

Gilder P. Varn, Jr. & Marge Varn

93-02533

**Name of Respondents**

Chesapeake Securities Research Corp.;  
Dennis Roy Roth;  
Bear, Stearns Securities Corp.

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**REPRESENTATION**

For Claimants: Gilder P. Varn, Jr. and Marge Varn ("Varn") were represented by Gilder P. Varn and Bill Cunningham, St. Louis, Missouri.

For Respondents: Chesapeake Securities Research Corporation ("Chesapeake") and Bear, Stearns Securities Corp. ("Bear Stearns") were represented by Thomas T. Taylor, of Chesapeake Securities Research Corporation, located in Towson, Maryland.

Dennis Roy Roth ("Roth") appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed: June 28, 1993.

Claimants' Submission Agreement signed on: July 6, 1993 by Gilder P. Varn, Jr. and October 12, 1993 by Marge Varn.

Statement of Answer filed by Respondent Chesapeake Securities on: September 13, 1993.

Respondent Chesapeake Securities' Submission Agreement signed on: September 9, 1993 by Thomas T. Taylor, President, Chesapeake Securities Research Corporation.

Amended Statement of Answer of Respondent Chesapeake Securities and Bear Stearns filed

on: November 5, 1993.

Statement of Answer filed by Respondent Roth on: September 4, 1993.  
Respondent Roth's Submission Agreement signed on: September 4, 1993.

Respondent Roth's Motion to Dismiss filed: September 4, 1993.  
Respondent Bear Stearns Securities Corporation's Motion to Dismiss filed: June 30, 1994.

Claimants' Response to Roth's Motion for Dismissal filed: September 16, 1993.  
Claimants' Response to Bear Stearns' Request for Dismissal filed: July 7, 1994.

### **HEARING INFORMATION**

Pre-Hearing Conference: None Held.  
Hearing Date/Sessions: July 11, 1994 for Two (2) Sessions.  
Hearing Location: St. Louis, Missouri.

### **CASE SUMMARY**

Claimants alleged that Respondent Roth, an account executive employed by Respondent Chesapeake Securities, made false representations to him in order to place his funds into unsuitable investments. The Claimants specifically alleged that:

1. On or about September 15, 1992, Varn contacted Roth by telephone for the sole purpose of obtaining information on a company in which Claimant owned stock ;
2. During the course of this telephone conversation, Roth induced Claimant by the use of guile, false pretense, trickery, and misinformation to instead purchase stock and call options in Belmac; and
3. Roth knowingly made false and misleading claims in regard to his position and expertise and Claimant believed, depended, and relied upon those claims. As a result Claimant incurred a loss of \$21,776.00 plus \$476.33 in expenses.

Respondent Dennis Roth denied the material allegations of the Statement of Claim, alleging that:

1. Claimant was clearly familiar with speculative issues, as he already owned 40,000 shares of a highly volatile and speculative common stock. Furthermore,

Claimant clearly understood that the investment objectives of his account was "Speculative, Appreciation with Risk";

2. After receiving an in depth research report and engaging in extensive discussions with Roth, Claimant purchased another speculative common stock and continued to buy the stock as the price of the stock fell approximately 80% from his original investment price;

3. At no time were any misrepresentations or guarantees made by Roth to the Claimant. The research report, which Claimant stated that he had read, clearly summarized the risks involved.

Respondent Chesapeake Securities and Bear Stearns denied the material allegations of the Statement of Claim, alleging that:

1. Claimant represented that he was an experienced investor who held substantial conservative investments, but was interested in Chesapeake Securities for advice on investments with a high risk/reward profile;

2. Claimant was provided with extensive information on a stock ("Belmac") both before he decided to take a position in it and afterwards. It is estimated that there were approximately two dozen phone calls between Roth and Claimant; and

3. The decline in Belmac stock is not due to misrepresentations by any of the Respondents, but to the overall decline in the pharmaceutical industry.

### **RELIEF REQUESTED**

Claimants requested entry of award against Respondents in the sum of \$21,776.00 and an additional \$476.33 direct expenses incurred by Claimant and all costs and expenses incurred in this matter.

Respondents requested that the Statement of Claim be dismissed in its entirety, and that respondents recover all attorney's fees and costs incurred in this proceeding.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Bear, Stearns Securities Corp. did not file an executed submission agreement, but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

At hearing, the Arbitrator took Bear Stearns' Motion to Dismiss under advisement for ruling at the conclusion of the hearing. Upon review of the evidence presented, the Motion is hereby granted.

On July 18, 1993, Respondent Chesapeake Securities filed a Motion Objecting to Response and Related Requests of Claimant, a Motion to Deny Arbitrator's Consent to a Change in Pleading, and a Motion to Reopen the Hearing. The Arbitrator hereby denies the first two respective Motions. The Motion to Reopen the Hearing was granted and all additional documentation filed after the hearing was accepted for review by the arbitrator.

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 original remains 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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Chesapeake Securities Research Corporation and Dennis Ray Roth are jointly and severally liable for and shall pay to Claimants Gilder P. Varn, Jr. and Marge Varn the sum of \$2,500.00;
2. Respondent Bear, Stearns Securities Corp. is hereby dismissed with prejudice;
3. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically granted is hereby denied.

#### **OTHER COSTS**

The NASD shall retain the \$300.00 postponement fee paid by Respondent Chesapeake Securities Research Corp.

#### **FORUM FEES**

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

assessed: Two (2) hearing sessions x \$300.00 per session = \$600.00.

The National Association of Securities Dealers, Inc. shall retain the \$100.00 claim filing fee and the \$400.00 hearing session deposit previously deposited by the Claimants, Gilder P. Varn, Jr. and Marge Varn. Respondents Chesapeake Securities Research Corp. and Dennis Ray Roth are jointly and severally liable for and shall pay to the Claimants, Gilder P. Varn, Jr. and Marge Varn, the sum of \$150.00 as reimbursement of a portion of the fees previously paid by Claimants. In addition, Respondents Chesapeake Securities Research Corp. and Dennis Ray Roth are jointly and severally liable for and shall pay to the NASD the sum of \$200.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Anthony J. Soukenik, Esq.  
Anthony J. Soukenik, Esq.  
Public Arbitrator

November 7, 1994

For NASD Use Only  
Date of Decision: November 8, 1994