

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant(s)

Bear Stearns & Company

93-02764

Name of Respondent(s)

Nedjat Elghanian

---

**REPRESENTATION**

For Claimant: J. Todd Cook, Esq., of Bear Stearns & Company, New York, NY.

For Respondent: Philip Elghanian of New York, NY.

**CASE INFORMATION**

Statement of Claim filed: July 14, 1993.

Claimant's Submission Agreement signed on: July 14, 1993.

Respondent, Nedjat Elghanian did not file a Statement of Answer.

Respondent, Nedjat Elghanian's Submission Agreement signed on: May 3, 1994.

Respondent, Philip Elghanian was served voluntarily and declined to submit to arbitration.

**HEARING INFORMATION**

Hearing Date/Sessions:

May 3, 1994/ One Session.

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

## CASE SUMMARY

Claimant alleged that Respondent Nedjat Elghanian instructed Claimant to purchase 8,000 shares of Alternative Distributors Corp. for his account and that Claimant executed the purchase order at a price of \$8.00 per share for a total purchase price of \$64,562.50. Claimant further alleged that Respondent provided Claimant with a check for the full amount which was later returned for insufficient funds. Claimant alleged that after informing Respondent that the check was returned for insufficient funds, Respondent tendered a second check for the full amount due which was also returned for insufficient funds.

Claimant next alleged that Claimant informed Philip Elghanian that if payment was not tendered immediately, pursuant to New York Stock Exchange Rules, Respondent's position would be liquidated. Claimant then alleged that Philip Elghanian instructed Claimant to sell the Alternative Distributive Corp. shares and that any remaining debit balance would be tendered upon Respondent Nedjat Elghanian's return to the United States. Claimant alleged it sold Respondent's 8,000 shares of Alternative Distributors Corp. at a market price of \$3.75 per share for 2,000 shares and at \$3.25 per share for 8,000 shares leaving a debit balance in Respondent's account of \$38,125. Claimant alleged it charged Respondent \$25.00 for the checks returned for insufficient funds which increased Respondent's debit balance to \$38,150.

Claimant alleged that on July 6, 1992, Philip Elghanian executed a Promissory Note in the amount of \$38,125 and signed a Guarantee of Account to secure the obligation due and owing to Claimant.

Claimant further alleged that after numerous demands for payment of the \$38,150 debit balance went unanswered, pursuant to the Customer Agreement, Claimant transferred a credit balance of \$22,497.50 from Respondent's account with Commonwealth Associates (a correspondent client of Claimant's) in partial satisfaction of the debit balance. Claimant alleged the offset reduced the outstanding debit balance to \$15,521.25. Claimant alleged that it has made numerous demands for repayment of the remaining debit balance which have not been answered.

Respondent Nedjat Elghanian did not submit an answer to the Claimant's allegations. During the hearing, Respondent Nedjat Elghanian did not dispute Claimant's allegations of Respondent's outstanding debit balance.

## RELIEF REQUESTED

Claimant requested: An award against Nedjat Elghanian and Philip Elghanian jointly in the amount of \$15,521.25 plus interest at a rate to be determined by the arbitrators from July 9, 1992 to the date of the award. Claimant also requested an award of all costs and expenses of this proceeding.

### OTHER ISSUES CONSIDERED & DECIDED

Philip Elghanian, named as a respondent in the Statement of Claim, was served on a voluntary basis by the NASD. Philip Elghanian signed a Guarantee of Account and Promissory Note which required the arbitration of disputes before the forum provided by the New York Stock Exchange. Philip Elghanian did not agree to voluntarily submit to arbitration before the NASD and, therefore, was not a party to this proceeding.

Respondent, Nedjat Elghanian did not submit an answer to the Claimant's Statement of Claim. Mr. Elghanian was not present at the commencement of the May 3, 1994 hearing. The procedural history was read into the record and, after establishing that Mr. Elghanian did have notice of the Statement of Claim and of the arbitration hearing scheduled for May 3, 1994, the Chairperson ruled that the case would proceed without Mr. Elghanian being present pursuant to Section 26 of the NASD Code of Arbitration Procedure. Approximately 45 minutes after the commencement of the arbitration hearing into the hearing, during Claimant's direct examination of its first witness, Mr. Philip Elghanian phoned the NASD to inform the parties present at the hearing that Respondent Nedjat Elghanian would not attend the hearing. The Chairperson then phoned Mr. Elghanian from the hearing, via speaker phone and after ascertaining that both Philip and Nedjat Elghanian were in New York City, informed Philip Elghanian that Respondent Nedjat Elghanian would be given until 11:00 A.M. eastern standard time to appear at the hearing.

Respondent Nedjat Elghanian and Philip Elghanian arrived at the NASD at approximately 11:15 A.M. The Chairperson then confirmed that Respondent Nedjat Elghanian had received Claimant's statement of claim and was on notice that the hearing would commence May 3, 1994. The Chairperson then had Respondent Nedjat Elghanian execute and notarize a Uniform Submission Agreement. Respondent Nedjat Elghanian was then allowed to present his arguments to the arbitrator. Respondent Nedjat Elghanian was represented by his son, Philip Elghanian, who also acted as an interpreter for Respondent.

### AWARD

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

Claimant is awarded \$15,521 plus simple annual interest at the rate of 5% from the period of July 9, 1992 to May 5, 1994.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the NASD Will retain the claim filing fee and hearing session deposit previously paid by the Claimant.

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

Arbitrator's Signature

Name

John T. McGuire

John T. McGuire, Esq.

Public/Industry

Date of Decision: 7/15/94

NASD Date of Award: July 15, 1994

Award #93-02764

STATE OF: *NEW YORK*

SS:

COUNTY OF: *NEW YORK*

On this *4* day of *JULY*, 1994, before me personally appeared **John T. McGuire, Esq.** know 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.

*Margaret C. Sprengman*

MARGARET C. SPRENGMAN  
Notary Public, State of New York  
No. 01SP4697068  
Qualified in Richmond County  
Certificate Filed in \_\_\_\_\_ County  
Commission Expires Oct. 31, *25*