

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**  
In the matter of the Arbitration Between

**Name of Claimant**

Anthony S. Delfino

NASD Arbitration  
No. 93-04928

**Name of Respondents**

Bear Stearns & Company  
Donald Kellen

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**REPRESENTATION**

For Claimant: William F. Davis, Esq.  
Pacific Palisades, California

For Respondents: Alan B. Goldman, Esq. - Katten Muchin Zavis & Weitzman  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: November 30, 1993

Claimant's Submission Agreement signed: November 17, 1993

Joint Statement of Answer filed by Respondents: February 10, 1994

Submission Agreement signed by Bear Stearns & Co. on February 10, 1994

Submission Agreement signed by Donald Kellen on February 25, 1994

**HEARING INFORMATION**

Hearing Dates / Sessions: November 8, 1994 - Two Sessions  
November 9, 1994 - Two Sessions

Hearing Location: Los Angeles, California

### CASE SUMMARY

Claimant, Anthony S. Delfino (Delfino) alleged that the Respondents made numerous unauthorized transactions in Delfino's personal account and caused the account to invest in grossly unsuitable securities and to be traded in an unsuitable fashion.

Respondents alleged that following each trade, for the entire period claimant had his account with Bear Stearns & Co., Inc., Delfino was provided with a confirmation slip describing every trade he had made. It is also alleged that, each month Claimant received a monthly summary describing the status of his account including its net worth and the current price of each stock, option, bond and/or commodity. In addition, it is asserted, that the statements advised claimant of any margin used, the yield generated by each security, and any cash withdrawals made and at no time did Claimant make any claim of unauthorized trades.

### RELIEF REQUESTED

Claimant seeks to recover, at least, \$7,500.00 for unjust enrichment, damages of \$60,000.00 in losses in his account, interest, attorney's fees, costs and punitive damages.

Respondents seek dismissal of the claim in its entirety plus costs.

### OTHER ISSUES CONSIDERED AND 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 original remains on file with the NASD.

During the course of the hearing, the Claimant amended his claim by withdrawing his claim for damages in the amount of \$7,500.00 for the alleged churning of Claimant's account and withdrew his claim for punitive damages. Claimant also reduced his claim for damages from \$60,000.00 to \$45,919.00 plus interest of \$9,219.00.

Respondent also sought sanctions against Claimant's attorney for failure to comply with the ten day document exchange requirement. The panel denied said request in that the delay in production was not detrimental to Respondents' ability to defend against the claim.

### 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:

1. Respondents, Bear Stearns & Co., Inc., and Donald Kellen, are jointly and severally liable and

shall pay to the Claimant, Anthony S. Delfino, the sum of Twelve Thousand Dollars and No Cents (\$12,000.00).

2. The claim for interest is denied.

3. The parties shall each bear their respective costs and fees, including attorney's fees.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$500.00 hearing session deposit previously deposited by the Claimant. Forum fees are to be split between the parties and are calculated as follows:

Four hearing sessions @ \$500.00/session	-	\$2000.00
Total fees assessed	-	\$2000.00
Claimant's share (50%)	-	\$1000.00
Credit for hearing deposit	-	\$ 500.00
Balance due	-	\$ 500.00
Respondents' share, jointly and severally (50%)	-	\$1000.00
Balance due	-	\$1000.00

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

### ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Frank Smith	Public Arbitrator
Ronald Cameron	Public Arbitrator
Robert Taylor	Industry Arbitrator

### Concurring Arbitrators' Signatures

\_\_\_\_\_  
Frank Smith

\_\_\_\_\_  
Ronald Cameron

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