

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Samuel C. Harris and
Beth K. Harris, Trustees/
Harris Family Trust

Claimants,

v.

No. 93-05055

Craig Hallum, Inc.,
Bear Stearns Securities Corp., and
Marc Kozberg

Respondents.

REPRESENTATION OF PARTIES

Claimants Samuel C. Harris and Beth K. Harris, Trustees/Harris Family Trust ("Claimants") were represented by Sandra K. Kensy, Esq., of Frank R. Berman, P.A., Minneapolis, Minnesota.

Respondents Craig-Hallum, Inc. ("CHI") and Bear Stearns Securities Corporation ("BSSC") were represented by Lawrence T. Hoffman, Esq., and Michael J. Steinlage, Esq., of Zelle & Larson, Minneapolis, Minnesota.

Respondent Marc Kozberg ("Kozberg") was represented by Albert A. Woodward, Esq. of Maun & Simon, P.C., Minneapolis, Minnesota.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about December 3, 1993. Claimants' Submission Agreements were signed on November 17, 1993, and January 14, 1994.

CHI's Statement of Answer was filed on or about March 28, 1994. CHI's Submission Agreement was signed on March 28, 1994.

BSSC's Statement of Answer was filed on or about May 6, 1994. BSSC's Submission Agreement was signed on May 5, 1994.

Kozberg's Statement of Answer was filed on or about March 14, 1994. Kozberg's Submission Agreement was signed on or about March 14, 1994.

HEARING INFORMATION

Pre-Hearing conference date: December 1, 1994. One (1) session.

Hearing dates: January 10, 1995. Two (2) sessions.
January 11, 1995. Two (2) sessions.
January 12, 1995. Two (2) sessions.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimants alleged that CHI, BSSC and Kozberg (referred to collectively as "Respondents"): made unsuitable investments; made material misrepresentations and omissions to the Claimants in connection with the purchase and sale of securities; excessively traded Claimants' account; violated Section 10(b) of the Securities Exchange Act, 15 U.S.C. Section 78 (j)(b); violated Rule 10b, 17 C.F.R. 240-10b-5; violated the Minnesota Securities Law; violated Minn. Stat. Section 80A.01; and the NASD Rules. Claimant further alleged that Respondents have violated their fiduciary duties, breached the contract between the parties, and have engaged in fraud and misrepresentation. Lastly, Claimants alleged that CHI and BSSC failed to adequately supervise Kozberg's activities and have participated in the fraudulent and illegal activities. The allegations arose out of purchases and sales of securities in Claimants' account. The securities covered by this claim were more fully presented and discussed during the hearing in this matter.

For its Statement of Answer, except to the extent expressly admitted or qualified therein, CHI denied each and every allegation of the Statement of Claim. In addition, CHI asserted the following affirmative defenses:

1. CHI failed to state a claim upon which relief can be granted.
2. Claimants accepted, confirmed, ratified and waived all transactions made in the Harris Family Trust account by Kozberg and CHI and are thereby estopped from alleging fraudulent and unlawful conduct with respect to the same.
3. To the extent Claimants assert any claim based upon transactions occurring more than six (6) years prior to the commencement of this arbitration, such claims are barred by Section 15 of the NASD Code of Arbitration Procedure. Other transactions alleged as improper are barred by applicable state and federal statutes of limitation, as well as by the doctrine of laches.
4. To the extent Claimants sustained the damages alleged, Claimants have failed to mitigate such damages.

For its Statement of Answer, BSSC denied each and every allegation of the Statement of Claim filed in this arbitration except to the extent expressly admitted or qualified therein. In addition, BSSC asserted the following affirmative defenses:

1. Claimants failed to state a claim upon which relief can be granted as more fully set

forth in its Motion to Dismiss filed on March 28, 1994.

2. Claimants accepted, confirmed, ratified and waived all transactions made in the Harris Family Trust account by Respondents and are thereby estopped from alleging fraudulent and unlawful conduct with respect to the same.

3. To the extent Claimants assert any claim based upon transactions occurring more than six (6) years prior to the commencement of this arbitration, such claims are barred by Section 15 of the NASD Code of Arbitration Procedure. Other transactions alleged as improper are barred by applicable state and federal statutes of limitation, as well as by the doctrine of laches.

4. To the extent Claimants sustained the damages alleged, Claimants have failed to mitigate such damages.

For his Statement of Answer, unless specifically admitted therein, Kozberg denied the allegations asserted in the Statement of Claim. In Addition, Kozberg asserted: That the Claimants are sophisticated investors who had a long history of investment experience; that he did not make any assurances to Claimants that their investments would remain only in income-producing investments and that any stocks would rise in price in a short period of time; that all of the purchases in Claimants' account were made solely at the prior direction and consent of the Claimants; that Claimants had full knowledge of the activities in the account and that Claimants at all times understood and appreciated all risks associated with their investments; that all of the transactions in Claimants' account were appropriate and suitable for Claimants; that all of the transactions were done with the express consent, authorization, and approval of the Claimants; and that Claimants waived, ratified and confirmed all transactions in the Harris Family Trust account and are now estopped from denying the same. Kozberg also asserted that to the extent that Claimants attempt to assert any claim based upon transactions occurring more than six (6) years prior to the commencement of this arbitration are barred by Section 15 of the NASD Code of Arbitration Procedure. Kozberg further asserted that other transactions alleged in the Statement of Claim are barred by applicable state and federal statutes of limitation. Lastly, Kozberg asserted that the Statement of Claim failed to state any specific claim against Kozberg and is without merit.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested an award of \$500,000.00.

CHI demanded:

1. That the Statement of Claim of Claimants be dismissed; and
2. That CHI be awarded costs, expenses and attorney's fees in defense of this action.

BSSC demanded:

1. That the Statement of Claim of Claimants be dismissed; and
2. That BSSC be awarded costs, expenses and attorney's fees in defense of this action.

Kozberg demanded:

1. That the Statement of Claim of Claimant be dismissed; and
2. That Respondent be awarded costs, expenses and attorney's fees in defense of this matter.

OTHER ISSUES CONSIDERED & DECIDED

BSSC filed a Motion to Dismiss the Statement of Claim. After review of the parties' Replies, the motion, and deliberation, the arbitrators denied the motion.

Claimants filed a Motion to Amend Claim. After review of the parties' Replies, the motion, and deliberation, the arbitrators denied the Motion to Amend the Statement of Claim.

On January 10, 1995, prior to the start of the hearing in this matter, BSSC was dismissed as a Respondent from this proceeding by stipulation of the parties.

The parties have agreed that the Award in this matter may be executed by 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(s) remain on file with the NASD.

AWARD

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

1. Claimants Samuel C. Harris and Beth K. Harris, Trustees/Harris Family Trust's claims made against Respondents Craig Hallum, Inc., Bear Stearns Securities Corp., and Marc Kozberg are, and each of them, denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth more fully below.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

1 Pre-hearing conference session x \$300.00 = \$300.00

6 hearing sessions x \$1,000.00 = \$6,000.00

Total hearing session fees to be assessed: \$6,300.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$250.00, and shall retain the hearing session deposit in the amount of \$1,000.00 previously paid to the NASD by the Claimants.

Additional forum fees in the amount of \$1,100.00 are assessed against the Claimants.

Additional forum fees in the amount of \$2,100.00 are assessed against Craig-Hallum, Inc..

Additional forum fees in the amount of \$2,100.00 are assessed against Marc Kozberg.

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

CONCURRING ARBITRATORS

Dated:

Name:

March 15, 1995

Eugene W. Bronski /s/
Eugene W. Bronski
Presiding Chair
Public Arbitrator

March 31, 1995

Bruce A. Lindvig /s/
Bruce A. Lindvig
Industry Arbitrator

March 12, 1995

Joseph F. Gross /s/
Joseph F. Gross
Public Arbitrator

4-5-95