

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant(s)

The Estate of Ali Gerami & Mahin Geramian

94-01614

Name of Respondent(s)

Bear Stearns & Company, Inc.  
Edward McClain "Clay" Bradley

---

**REPRESENTATION**

For Claimant: The Estate of Ali Gerami and Mahin Geramian: George Robertson, Jr., Esq., Roswell, GA.

For Respondent Bear Stearns and Co., Inc. ("Bear Stearns"): Terry R. Weiss, Esq. of the law firm of Long Aldridge and Norman, Atlanta, GA.

For Respondent Edward McClain "Clay" Bradley ("Bradley"): Gerald B. Kline, Esq., Atlanta, GA.

**CASE INFORMATION**

Statement of Claim filed: May 2, 1994.

Amendment to Statement of Claim dated: February 28, 1994.

Claimants' Submission Agreement and Power of Attorney signed on: April 29, 1994.

Statement of Answer and Counterclaim filed by Respondent Bear Stearns on: August 19, 1994.

Respondent Bear Stearns' Submission Agreement signed on: August 18, 1994.

Statement of Answer and Counterclaim filed by Respondent Bradley on: August 24, 1994.

Respondent Bradley's Submission Agreement signed on: August 22, 1994.

### HEARING INFORMATION

Hearing Dates/Sessions:     July 18, 1995 / Two Sessions  
                                     July 19, 1995 / Two Sessions  
                                     July 20, 1995 / One Session

Hearing Location:     Swissotel, 3391 Peachtree Road, N.E., Atlanta, GA.

### CASE SUMMARY

Claimants alleged that they are citizens and residents of Iran and that Respondent Bradley knew that Claimants were unfamiliar with American stock markets. Claimants alleged that they had certain certificates of deposit mature that were in U.S. currency and that Claimants' son, Shad Gerami ("Shad"), who had a five to six year friendship with Respondent Bradley, was assured by Bradley that he could open a stock account for his parents and have a "Report of New Account" filled in the name of Ali Gerami. The form showed the customer to be a married individual who was retired and who would be trading in cash. Shad Gerami, the son, was to have "limited" trading authorization and the trading authorization made no mention of permitting margin trading. Under these conditions, Claimants allege that two accounts were opened, one for Ali Gerami and one for Mahin Gerami. Claimants further alleged that the trading in the two accounts was excessive and that the commissions generated often exceeded the gain to the investor. Claimants alleged that the level of trading activity for these individuals, who earned no income and were retired, was unnecessary, unproductive and unsuitable. Claimants also alleged the Respondents created and/or influenced a portfolio that was unsuitable for the Claimants including many inappropriate stocks. Claimants also alleged that Respondent Bradley executed unauthorized transactions in the Claimant's accounts, specifically the unauthorized purchase of 10,000 shares of Amylin Common stock on margin for the account of Ali Germai. Claimants further alleged the Respondents' acts constituted a conversion, common law and securities fraud, and that Respondents' acts further constituted a breach of fiduciary duty, breach of contract, a violation of NASD Rules of Fair Practice and New York Stock Exchange rules, and negligence. Finally, Claimants alleged they were entitled to an accounting pursuant to O.C.G.A. 23-2-70.

Respondent Bear Stearns denied that any of the Claimants ever represented that the funds deposited to the subject accounts were funds upon which the Claimants would rely for retirement income and further denied that the Claimants did not expressly authorize and approve margin trading in their accounts or that the trading authorization did not authorize the use of margin by Shad, their attorney-in-fact. Bear Stearns denied that it or any of its agents or employees, including Respondent Bradley, ever maintained actual or implied control over any accounts of the Claimants' at Bear Stearns.

Respondent Bear Stearns further denied that the accounts of Mahin and Ali were excessively traded in light of their stated investment objectives and desires with respect to the funds deposited in the accounts and denied that commissions generated in each account were excessive in light of those objectives. Bear Stearns denied that any of these securities purchased by the Claimants pursuant to the express authorization of their attorney-in-fact, Shad, were unsuitable and/or inappropriate for the Claimants in light of the stated investment objectives and desires for the subject accounts.

Respondent Bear Stearns further denied that any of the transactions effected for the accounts of the Claimants were executed without express consent, authorization, and/or approval of Shad, the authorized agent, representative and attorney-in-fact of the Claimants.

Respondent Bear Stearns also denied that it and/or its agents or employees in any way converted assets or property of the Claimants in connection with its handling of the Claimants' accounts and denied that its conduct or the conduct of any of its agents or employees constitutes either common law or securities fraud under applicable federal securities laws. Respondent Bear Stearns denied that it owed any fiduciary duty to any of the Claimants and that even if such duty was owed, its conduct did not constitute a breach thereof. Bear Stearns denied that it breached any contractual or regulatory duty, obligation or representation arising under NASD and/or NYSE rules. Bear Stearns further denied that its conduct or the conduct of any of its employees or agents involved in the handling of the accounts of the Claimants was in anyway negligent or constituted a failure to exercise reasonable and ordinary care in connection with the handling of the Claimants' account. Bear Stearns maintained the Claimants are not entitled to punitive damages since New York law specifically precludes an award of punitive damages in arbitration.

Respondent Bear Stearns maintained that Shad stated his parent's accounts would be traded aggressively in order to generate profits, and that Shad effected numerous transactions for each of the accounts at issue on an unsolicited basis

without any input or advice from Respondent Bradley. Bear Stearns maintained that Shad alone controlled each of the accounts and expressly authorized each and every transaction effected in the accounts with the exception of those transactions effected to meet margin calls and that Shad was fully informed and aware of the risks associated with each any every investment effected for the accounts of his parents.

Respondent Bear Stearns further maintained, with regard to the purchase of the shares of Amylin Pharmaceuticals, that every purchase was separately confirmed by telephone to Shad by Mr. Bradley or his assistant as well as in writing by Bear Stearns within one day of each trade and that no complaint was made until the shares had declined in value. Bear Stearns denied that the Claimants are entitled to an accounting since all agreements required the application of New York law dispute.

In asserting a counterclaim against the Claimants, Bear Stearns alleged that at the time the accounts of the Claimants were established, Claimants each executed a trading authorization form appointing Shad as their agent and attorney-in-fact with full authority to act on their behalf. Bear Stearns maintained that through these forms, the Claimants agreed to indemnify Bear Stearns for any and all losses, costs or expenses incurred in connection with the use of the trading authorization, and that as a result of Claimant's actions, Bear Stearns will incur cost and expenses in excess of \$50,000.00.

Respondent Bradley incorporated by reference the Answer of the Co-Respondent Bear Stearns. Respondent Bradley further maintained that he at all times reasonably and justifiably relied upon Shad Gerami's statements regarding his parents' investment objectives and financial condition in establishing the subject accounts and discussing potential investments, and that Mr. Gerami made his own investment decisions and consented to affirmed or ratified any trade or trading strategy recommended by the Respondents. Bradley maintained that to the extent the Claimants have suffered losses, the same resulted from their own conduct or market forces beyond Mr. Bradley's control. Respondent Bradley further maintained Claimants' fiduciary breach claims are unassertable because in the non-discretionary accounts, Shad Gerami controlled and directed all transactions and he approved margin trading in the accounts to leverage account positions for potential profit.

Respondent Bradley also asserted a counterclaim against the Claimants, alleging that the Claimants executed and delivered to Bear Stearns a trading authorization which was described above and that Mr. Bradley is a third party beneficiary of the indemnity benefits provided by these trading authorizations;

therefore, Bradley maintained that is entitled to an award of indemnity against the Claimants in the amount of all damages, losses, costs and expenses, including attorneys' fees, which he has or shall continue to incur in connection with the claim.

**RELIEF REQUESTED**

Claimants requested the following damages:

1. Any and all losses from inappropriate trading in Claimants' accounts;
2. Any and all losses from excessive trading in Claimants' accounts;
3. Any and all losses from unauthorized trading in Claimants' accounts;
4. Any and all commissions debited from Claimants' accounts from any transactions related to 1, 2, and 3, above;
5. Any and all interest debited from Claimants' accounts due to Respondents' use of impermissible margin transactions;
6. Any and all monies debited from Claimants' accounts from any act of conversion on the part of the Respondents;
7. Any and all costs of these proceedings, including the costs of arbitration;
8. Interest at the legal rate from the date of the cause of action for all Claimants' money wrongfully taken;
9. All reasonable attorney's fees of this case;
10. An award to the Claimants in an amount of at least \$50,000.00 from the Respondents to deter future wrongdoing;
11. Any other award the Arbitration Panel may feel is just and deserving.

Respondent Bear Stearns and Co., Inc. requested that all claims be dismissed in their entirety and that an award be rendered in favor of Bear Stearns and Co., Inc. for the full amount of the costs and expenses incurred by it in defense of these claims.

Respondent Edward McClain "Clay" Bradley requested an award in his favor, dismissing the claim in its entirety. He further requested indemnification for all attorneys' fees and expenses which he shall incur in defending against the claims.

Alternatively Respondent Bradley requested that if the panel is inclined to award damages to the Claimants he requested an award in like amount against them as indemnification.

### **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. The arbitration panel has determined that Shad Gerami and not Edward McClain "Clay" Bradley controlled all of the activity in the account. Therefore, all claims against both Respondents are dismissed in all respects.
2. The Claimants' request for punitive damages is denied.
3. Based upon the terms and conditions of the indemnification portion of the power of attorney given to Shad Gerami by the Claimants the arbitrators determined that the Claimants and/or their Estate are liable jointly and severally and shall pay to the Respondent Bear Stearns and Co., Inc. the sum of \$26,000.00 representing attorneys' fees.

### **FORUM FEES**

Pursuant to Section 43c to the Code of Arbitration Procedure, the following Forum Fees are assessed:

Non-refundable claim filing fee:	\$ 250.00
Hearing Session fees:	\$3,750.00 (\$750.00 x 5 sessions)
Total Fees:	\$4,000.00

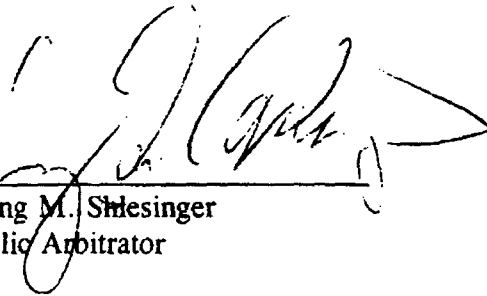
The undersigned arbitrators have determined that the Claimants are responsible for all forum fees. Therefore, the Claimants are liable and shall pay to the NASD the sum of \$4,000.00. Claimants previously paid \$950.00 and owe a balance of \$3,050.00.

Page 7  
Award #94-01614

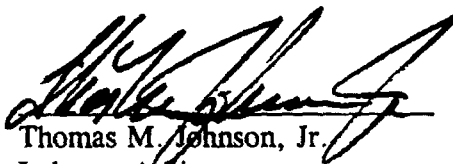
ARBITRATORS' SIGNATURE



Richard Allan Kaye, Esq.  
Public Arbitrator



Irving M. Shlesinger  
Public Arbitrator



Thomas M. Johnson, Jr.  
Industry Arbitrator

Date of Decision: August 9, 1995