

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

John H. Miller, Jr.

and

94-01771

Name of Respondent

Joseph A. Ondris

REPRESENTATION OF PARTIES

John H. Miller, Jr. ("**Claimant**") was represented by Hershel J. Shapiro, Esq., Denver, Colorado.

Joseph A. Ondris ("**Respondent**") was represented by Terence J. Hart, Esq., Hutcheson & Grundy, L.L.P., Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about May 12, 1994. Submission Agreement of Claimant John H. Miller, Jr. was signed on May 6, 1994.

Statement of Answer was filed by Respondent Joseph A. Ondris on or about September 6, 1994. Submission Agreement of Respondent Joseph A. Ondris was signed on August 30, 1994.

HEARING INFORMATION

The hearing was held on Wednesday, February 1, 1995 for one (1) session, Thursday, March 30, 1995 for two (2) sessions and Friday, March 31, 1995 for two (2) sessions in Dallas, Texas for a total of five (5) sessions.

CASE SUMMARY

Claimant alleged that during the period February 1993 and April 1993, Joseph Ondris, failed to disclose the tax consequences of a transfer of funds from Claimant's IRA account to a personal account in Claimant's name. It was further alleged that Respondent Ondris failed to disclose that the securities purchased in the personal account were high risk and were purchased on margin. Claimant also alleged that Respondent failed to disclose the true nature of the

transactions which he believed to be a loan from Bear Stearns. Specifically, Claimant stated that Respondent Ondris failed to disclose the nature and risks of the "loan". Claimant also alleged that Respondent Ondris began a series of unnecessary transactions for the purpose of generating commissions. Claimant alleged that these activities constituted negligence, fraudulent misrepresentation, fraud in the inducement, fraudulent concealment, tortious conduct, churning, violation of federal securities laws, and violation of the Texas Deceptive Trade Practices Act ("DTPA").

Respondent Ondris denied the allegations set forth in the Statement of Claim. Respondent Ondris specifically stated that he had advised the Claimant to seek professional tax advice at the time the Claimant requested the transfer of funds from his IRA account to his personal account. It was further stated that the forms authorizing the transfer of funds, which were signed by the Claimant, also stated that the customer should seek personal tax advice.

RELIEF REQUESTED

Claimant requested an award as follows:

- ▶ \$18,021 for damages resulting from losses in the Net Equity Value of his accounts at Bear Stearns from January 29, 1993 through April 30, 1993 (less distributions);
- ▶ \$20,000 for damages resulting from tax liabilities incurred by him as a consequence of premature distribution of IRA funds;
- ▶ \$4,192 for lost profits from January 29, 1993 through April 30, 1993, representing the average return received by him on the funds remaining in his IRA account;
- ▶ \$54,063 in exemplary damages;
- ▶ costs, expenses and attorneys' fees incurred; and
- ▶ such other and further relief as the Arbitrators may deem just and proper including but not limited to damages for pain and suffering caused by the wrongful actions of Respondents.

Respondent requested that the claims asserted against him be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

At the commencement of the first scheduled hearing day, Respondent Ondris requested a postponement of the hearing to obtain an attorney. The arbitrators made the following determination at that hearing:

1. The request for postponement is granted with the following conditions:
 - a. Respondent Ondris will not be allowed to present witnesses or documentary evidence at the hearing of this matter other than cross-examination and his own testimony.

- b. The above condition will be waived in the event that Respondent Ondris reimburses the travel expenses of Mr. Richie Miller and Mr. Herschel Shapiro to attend the hearing conducted on February 1, 1995. Claimant will supply Respondent Ondris with copies of airline ticket receipts by February 7, 1995.
2. Claimant is to identify persons whose testimony will be presented by affidavit by February 14, 1995. Copies of any affidavit will not be required to be produced except in compliance with §32(c) of the NASD Code of Arbitration Procedure.
3. Respondent Ondris will identify which, if any, of those individuals identified he would like to depose. Any costs associated with the live or telephonic deposition of any person so identified by Respondent Ondris will be at his expense.
4. Respondent Ondris shall bear the forum fees for this hearing session.

Prior to the commencement of the hearing of this matter, Claimant had settled all claims asserted against Bear Stearns & Company, previously named as a Respondent in this matter.

The parties have agreed that a handwritten, signed Award may be entered. 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Joseph A. Ondris shall be and hereby is liable for and shall pay to the Claimant John H. Miller, Jr. the sum of **Twelve thousand five hundred dollars (\$12,500)**.
1. Respondent Ondris shall be and hereby is liable for and shall pay to the Claimant John H. Miller, Jr. the sum of **Five hundred dollars (\$500)** as reimbursement of the hearing session deposit previously paid to the NASD by the Claimant.
1. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were five (5) sessions x \$500 = \$2,500 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD by the Claimant John H. Miller, Jr. The NASD shall retain the surcharge in the amount of \$200 imposed pursuant to §45 of the NASD Code of Arbitration Procedure previously deposited with the NASD by Respondent Bear Stearns & Company. **Respondent Ondris** shall be and hereby is liable for and shall pay to the NASD the sum of **\$2,000** as the balance due for forum fees.

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

Dated:

/s/ Harold Hawk Vanberg, Jr., Esq.

April 18, 1995

Harold Hawk Vanberg, Jr., Esq.
Public Arbitrator, Presiding Chair

/s/ George C. Witte

April 16, 1995

George C. Witte
Public Arbitrator

/s/ Jack R. Settles

April 17, 1995

Jack R. Settles
Industry Arbitrator