

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimant

Herzog, Heine, Geduld, Inc.,

95-01126

Name of Respondents

A.T. Brod & Co., Inc.,
Bear Stearns Securities Corp., Inc.,
Kemper Clearing Corp.,
Roddy DiPrimo, S.A.

REPRESENTATION

For Claimant Herzog, Heine, Geduld, Inc.: Michael J. McAllister, Esq, from the law firm of Lane & Mittendorf, New York, NY

For Respondent Bear Stearns Securities Corp: William C. Mallery, Esq. of Bear Stearns & Co., Inc., New York, NY

For Respondent Kemper Clearing Corp.: Henry F. Minnerop, Esq., from the law firm of Brown & Wood, New York, NY

For Respondent Roddy DiPrimo S.A.: Brian Graifman, Esq., from the law firm of Caro & Graifman, P.C., New York, NY

CASE INFORMATION

Statement of Claim filed: March 3, 1995

Amended Statement of Claim filed: April 10, 1995

Claimant's Answer to Kemper Clearing Corp.'s Counterclaim filed: May 11, 1995

Claimant's Submission Agreement signed on: March 3, 1995

Respondent Kemper Clearing Corp.'s Statement of Answer and Counterclaim filed: April 28, 1995

Respondent Kemper Clearing Corp.'s Amended Statement of Answer filed: May 23 1995

Respondent Kemper Clearing Corp. did not sign a Submission Agreement as required by Section 25(b) of the NASD Code of Arbitration Procedure (the "Code").

Respondent Bear Stearns Securities Corp.'s Statement of Answer and Cross Claim against Roddy DiPrimo, S.A. filed: May 8, 1995

Respondent Bear Stearns Securities Corp.'s Submission Agreement signed on: May 8, 1995

Respondent Kemper Clearing Corp.'s Cross-Claim against A.T. Brod & Co., Inc. and Roddy DiPrimo S.A. filed: May 23, 1995.

Respondent Roddy DiPrimo S.A.'s Answer filed: May 30, 1995.

Respondent Roddy DiPrimo S.A. did not file a Submission Agreement as required by Section 25(b) of the Code.

Respondent A.T. Brod & Co., Inc. did not appear at the hearing nor file a Statement of Answer as required by Section 25(b) of the Code.

HEARING INFORMATION

Pre-Hearing Conferences:	November	11, 1995	1 Session
Hearing dates/sessions:	December	4, 1995	2 Sessions
	December	8, 1995	2 Sessions

The hearings were held at the offices of the National Association of Securities Dealer, Inc. located in New York, New York.

CASE SUMMARY

Claimant Herzog, Heine, Geduld, Inc. ("HHG"), alleged A.T. Brod & Co., Inc. ("Brod"), Bear Stearns Securities Corp. ("Bear Stearns"), and Kemper Clearing Corp. ("Kemper") are all members of the NASD. Claimant further alleged that on February 24, 1995, Respondents initiated, executed and cleared illegal short-sales. HHG alleged that the NASD had prohibited the "short sale of DYGNZ, EVRM, PANXU, and PLCO (the "securities") and that the ultimate seller of the securities did not own them at the time of the sale to HHG.

Claimant specifically alleged Brod, a non-market maker, sold to HHG, as market maker, the securities. Claimant also alleged Brod was the executing broker for Roddy DiPrimo, S.A.

("DiPrimo"), a public customer who maintained an account with Bear Stearns. Claimant further alleged Kemper acted as clearing firm for Brod.

Claimant alleged Bear Stearns and DiPrimo entered into a Professional Account Agreement to which HHG was a third party beneficiary. Claimant further alleged that it was on DiPrimo's behalf, as the undisclosed principal, that the illegal short-sales were made.

Claimant alleged the subject losses were incurred in selling the securities when Hanover Sterling Securities ("Hanover"), the party to whom HHG in turn sold the securities, and Adler, Coleman Securities Corp. ("Adler"), Hanover's clearing agent, went out of business, leaving subsequent trades unsettled. Specifically, Claimant alleged Respondents were liable for the resulting damages in the amount of \$706,812.50 sustained by HHG as a direct result of the illegal short-sales.

Kemper maintained its role was solely that of clearing broker of Brod and, as such, it had no involvement or duty to investigate Brod's sales to HHG. Kemper further maintained DiPrimo was not a customer of Kemper, but was of both Brod and Bear Stearns; therefore, all sales by Brod were effected for the account of Bear Stearns and benefit of DiPrimo.

Kemper maintained HHG knew Kemper acted exclusively as clearing broker for Brod and, further, that Kemper had no involvement, duty or responsibility for determining whether DiPrimo's sales were long or short. Kemper further maintained that as HHG's claim was unwarranted, HHG breached its duty to observe high standards of commercial honor as required of all NASD members by Article III, Section 1 of the NASD Rules of Fair Practice.

Kemper maintained that the Prime Brokerage Agreement stated that "if Executing Broker is acting as a clearing broker on behalf of an introducing firm, Executing Broker shall enter into an agreement with such Introducing Broker which shall allocate between the parties the rights and obligations of Executing Broker hereunder." Therefore, Kemper maintained that, as it was acting as a clearing broker for Brod pursuant to the Kemper-Brod clearing agreement, any suggestion that Kemper owed a duty to HHG "to know" DiPrimo or to investigate DiPrimo's transactions was contrary to fact, industry practice and the pertinent contracts.

Kemper, maintained Brod was responsible for "knowing" its customer DiPrimo under the Kemper-Brod clearing agreement and NYSE Rule 405. Kemper further maintained the clearing agreement provided for indemnification in favor of Kemper in the event Kemper was held liable for Brod's conduct.

Kemper, maintained DiPrimo knew exactly whether its sales were long or short and, if short, whether it had made arrangements to borrow the securities sold short and whether it had complied with all applicable rules and regulations pertaining to short sales.

Respondent Bear Stearns maintained that the responsibility for compliance with short-sales rules rests on the executing broker, who has the responsibility for ascertaining that shares sold short will be available for borrowing prior to executing a short sale. Bear Stearns further maintained that pursuant to the terms of the Prime Brokerage Agreement executed between it and Kemper, Kemper had the responsibility for complying with all applicable rules and regulations, both of the SEC and applicable self-regulatory organizations, regarding the execution of short sales. Therefore, Bear Stearns maintained that any liability arising from the execution of the short-sales in question rested solely with Kemper, Brod and DiPrimo.

Bear Stearns maintained that Kemper and its introducing broker Brod were the executing brokers for DiPrimo and the transactions in dispute. Bear Stearns alleged that, as such, Kemper, Brod and DiPrimo were responsible for the proper execution of the disputed short-sales. Bear Stearns, maintained the Prime Brokerage Agreement and clearing agreement indicated that Kemper was merely acting as a clearing broker on behalf of Brod, the actual executing broker for the disputed transactions. As such, Bear Stearns further maintained that it was Brod who had full responsibility to know DiPrimo.

DiPrimo maintained the controversy arose from five transactions in which HHG purchased securities from Brod, on behalf of a prime brokerage customer which cleared its trades through Bear Stearns. DiPrimo further maintained that, as HHG purchased the securities in question on the open market, "unless DiPrimo was the only entity selling those stocks for those prices on that day, there is no way of allotting those fungible shares to DiPrimo." DiPrimo further maintained that, as there was no connection between itself and the securities in question, they could not be liable.

RELIEF REQUESTED

Claimant requested damages against Respondents, jointly and severally, in the amount of \$706,812.50, plus interest, costs and fees.

Respondent, Bear Stearns Securities Corp., requested that all claims be denied in their entirety and that all costs be assessed against Claimant or Co-Respondents. In the alternative, if any liability is found to exist in favor of the Claimant, Bear Stearns requested that its cross claim be granted and any such liability and/or costs be assessed against Cross-Claim Respondents.

Respondent, Kemper Clearing Corp., requested dismissal of Herzog's claims and requested attorney's fees and costs be assessed against Herzog. In addition, Kemper requested indemnification against A.T. Brod and Roddy DiPrimo.

Respondent, Roddy DiPrimo, S.A., requested that all claims be dismissed and that all costs be assessed against Claimant or the Respondents.

OTHER ISSUES CONSIDERED AND DECIDED

1. 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 originals remain on file with the NASD.
2. At the hearing in this matter Herzog, Heine, Geduld, Kemper Clearing Corp. and Bear Stearns Securities Corp. agreed to dismiss all claims that each party had asserted against the other.
3. The arbitration panel made the following rulings concerning Respondent, A.T. Brod & Co. who failed to appear at the evidentiary hearing conducted in this matter:
 - a. Pursuant to Section 1 of the NASD Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.
 - b. The panel found that the Respondent, A.T. Brod & Co., was a member of the NASD at the time the controversy arose. Consequently, the panel found personal jurisdiction over the Respondent, A.T. Brod & Co., pursuant to Section 12 of the NASD Code of Arbitration Procedure.
 - c. In view of (2) above, the panel found that Respondent, A.T. Brod & Co., was required to file with the NASD a statement of Answer and a properly executed Submission Agreement pursuant to Section 25(b) of the NASD Code of Arbitration Procedure. In this regard, the panel found that the Statement of Claim was properly served upon the Respondent, A.T. Brod & Co., pursuant to Section 25(a) of the Code.
 - d. In addition, in accordance with Sections 21, 26 and 29 of the NASD Code of Arbitration Procedure, the panel found that the NASD provided Respondents, A.T. Brod & Co., with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel, therefore, determined to proceed with the hearing without Respondent, A.T. Brod & Co., whose absence was unexcused.

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. All claims asserted by Herzog, Heine, Geduld, Inc. against A.T. Brod & Co., are denied;
2. In the absence of a pre-dispute agreement to arbitrate between Herzog, Heine, Geduld, Inc. and Roddy DiPrimo, S.A., the panel is without authority to exercise jurisdiction over the claims asserted by Herzog against DiPrimo and; therefore, dismiss all claims asserted by Herzog, Heine, Geduld, Inc. against Roddy DiPrimo, S.A. without prejudice pursuant to Section 16 of the NASD Code of Arbitration Procedure.
3. Bear Stearns' cross-claim against A.T. Brod and Roddy DiPrimo, S.A. are hereby denied;
4. Kemper Clearing Corp.'s cross-claims against A.T. Brod and Roddy DiPrimo, S.A. are hereby denied;
5. All parties are to bear their respective costs, including attorney's fees; and,
6. All other requests for relief are denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Pre-Hearing Conference Fees	(1 x \$ 300.00)=	\$ 300.00
Hearing Session Fees	(4 x \$1000.00)=	\$ 4,000.00

Total Forum Fees:		\$ 4,300.00
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1. Respondent, Roddy DiPrimo, S.A., is assessed \$2,150.00, representing one-half the total forum fees due. Roddy DiPrimo, S.A. is liable and shall pay to the NASD the sum of \$2,150.00.
2. Respondent, A.T. Brod & Co., Inc., is assessed \$2,150.00, representing one-half the total forum fees due. A.T. Brod & Co., Inc. is liable and shall pay to the NASD the sum of \$2,150.00.

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

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ARBITRATORS' SIGNATURES

/s/ _____
Therese Obringer
Industry Arbitrator, Chairperson

/s/ _____
Jolie Caldwell
Industry Arbitrator

/s/ _____
Paul Kanischak
Industry Arbitrator

Date of decision: March 27, 1996

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I, Therese Obringer, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

Therese Obringer, Esq.

I, Jolie Caldwell, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

Jolie Caldwell

I, Paul Kanischak, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

Paul Kanischak