

9/17/95

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Jacinto Vasquez

95-01243

Names of Respondents

Bear Stearns & Company, Inc.
Philip Cason Connell
Thomas M. Pearce, Jr.
Floyd K. Berger
Fred Steven Ginsberg

REPRESENTATION

For Claimant Jacinto Vasquez ("Vasquez"): Michael A. Hanzman, Esq. of Hanzman, Criden, Korge & Chaykin, P.A., Miami, Florida. Jacinto Vasquez
Chaykin, P.A., Miami, Florida.

For Respondents Bear Stearns & Company, Inc. ("Bear Stearns"), Philip Cason Connell ("Connell"), Thomas M. Pearce, Jr. ("Pearce") and Floyd K. Berger ("Berger"): Bennett Falk, Esq. of Morgan, Lewis & Bockius, Miami, Florida. Bear Stearns
Pearce, Jr. ("Pearce")
Lewis & Bockius, Miami, FL

Respondent Fred Steven Ginsberg did not appear (see "Other Issues"). Respondent Fred Steven Ginsberg

CASE INFORMATION

Statement of Claim filed: March 7, 1995.

Amended Statement of Claim filed: September 3, 1995.

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

Joint Answer to Statement of Claim, Counterclaim and Cross Claim of Respondents Bear Stearns, Connell, Pearce and Berger filed: June 26, 1995.

Joint Answer to Amended Statement of Claim, Counterclaim and Cross Claim of Respondents Bear Stearns, Connell, Pearce and Berger filed: October 13, 1995.

Respondent Bear Stearns' Submission Agreement signed: June 26, 1995.

Respondents Connell, Pearce and Berger did not file executed Submission Agreements.

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Respondent Ginsberg did not file a Statement of Answer or sign a Submission Agreement as required by Rule 10314 of the Code of Arbitration Procedure ("Code") (see "Other Issues").

HEARING INFORMATION

On July 7, 1997 a telephonic pre-hearing conference lasting one (1) session was conducted with the Chairperson.

On July 15, 16, 17, and August 27, and 28, 1997, hearings lasting eight (8) sessions were conducted in Fort Lauderdale, Florida.

CASE SUMMARY

Claimant asserted various statutory and common law causes of action, including claims arising under the federal and Florida's securities laws, and claims for breach of fiduciary duty, negligence, common law fraud, negligent supervision, breach of contract, and civil theft under Florida statutory law. Claimant alleged that each claim arose out of the handling of Claimant's securities accounts maintained at Bear Stearns' Atlanta, Georgia office; that Claimant hired Respondent Ginsberg to act as his investment advisor and was fraudulently induced by Ginsberg to invest through Bear Stearns in speculative and highly leveraged bond transactions; that Respondents knew or should have known that Ginsberg had a chronic history of securities infractions and customer complaints; that Respondents failed to perform any type of reasonable background check or due diligence on Ginsberg; and, that Respondents breached their statutory and common law duties of care owed to Claimant as a public customer.

Respondents Bear Stearns, Connell, Pearce and Berger denied the allegations of wrongdoing contained in the Statement of Claim and alleged that in an attempt to increase the return on his investments, Claimant engaged the service of financial consultant Ginsberg, who allegedly promised Vasquez a 22% risk-free return on his investment; that before making any contact with Bear Stearns, Vasquez agreed to give Ginsberg control over his money for the purpose of purchasing government bonds on margin which was the strategy recommended by Ginsberg; that Vasquez and Ginsberg later opened an account for Vasquez at Bear Stearns for the purpose of effectuating the Ginsberg strategy; that no Bear Stearns employee ever recommended or encouraged Vasquez's hiring of Ginsberg, and no Bear Stearns employee recommended the strategy which Vasquez and Ginsberg employed or made assurances as to the alleged safety of this strategy. Bear Stearns further denied that it had any duty to Vasquez to either investigate Vasquez's hand-picked financial consultant, Ginsberg, or to ensure that Vasquez fully understood the strategy which he and his advisor had agreed to employ in his account. Bear Stearns next alleged that Vasquez explicitly agreed that he was not looking to Bear Stearns for any advice or recommendations regarding his chosen investment strategy; that it is undisputed that Bear Stearns gave Vasquez no such advice and made no such recommendations, and that Bear Stearns never made any misrepresentations to Vasquez regarding his chosen investment strategy neither did Vasquez request that Bear Stearns investigate Ginsberg's credentials, which Bear Stearns had no independent obligation to do; that Bear Stearns explicitly advised Vasquez that the purchases made in his account were highly risky and could result in large losses, and Vasquez signed documents acknowledging that he understood this; that Vasquez failed to exercise due diligence with respect to his account; and, that Vasquez never made any inquiry into Ginsberg's background before hiring him.

Bear Stearns next alleged that Vasquez failed to take appropriate action when it became abundantly apparent to him that his account was beginning to lose money in what he allegedly believed to have been a "risk-free" strategy; that even when learning for the first time that his equity was down to \$500,000.00 Vasquez took no steps to discharge Ginsberg, liquidate his positions, or seek advice from anyone, but

instead supposedly went off to Panama for one month; that certainly during that month and at many other times Vasquez had ample opportunity to liquidate his investments at a very small loss, but he chose not to do so. Respondents Bear Stearns, Connell, Pearce and Berger maintained that they acted at all times in accordance with the instructions of Ginsberg as specifically authorized by Vasquez; that Bear Stearns recommended neither Ginsberg nor his strategy and advised Vasquez of the risks associated with the investments Vasquez had chosen to make in his account; that Vasquez knew the risks of his chosen strategy, yet chose to pursue the strategy in search of larger returns; and that Bear Stearns violated no duty which it owed to its customer.

In addition, Bear Stearns asserted a counterclaim against the Claimant for indemnification. Bear Stearns maintained that as a result of the exercise of authority conferred by the Claimant upon Ginsberg, Bear Stearns incurred and will continue to incur consequential expenses in connection with the defense of the claims asserted in this proceeding and that pursuant to the terms of the trading authorization executed by the Claimant at the time the accounts at issue were established, the Claimant expressly agreed to reimburse Bear Stearns for said expenses. Further, Bear Stearns, Connell, Pearce and Berger asserted a cross claim for indemnification against Respondent Ginsberg and alleged that in the event that they are found liable in any way to the Claimant for the losses allegedly sustained, said liability is the direct and proximate result of the conduct of Respondent Ginsberg, who authorized the transactions complained of by the Claimant; and that if an award is entered against Bear Stearns, Connell and Pearce in favor of the Claimant that such award be entered instead against Ginsberg. The Claimant denied the allegations contained in Respondents Bear Stearns', Connell's and Pearce's counterclaim and denied any liability with respect to the damages sought by the Respondents in this regard.

Respondents Bear Stearns, Connell, Pearce and Berger denied the allegations of wrongdoing asserted by the Claimant and alleged that in an attempt to increase the value of the accounts at issue, Respondents Bear Stearns, Connell, Pearce and Berger advised the Claimant to purchase securities through Respondent Ginsberg, who allegedly promised Vasquez 25% and 30% returns. Respondents Bear Stearns, Connell, Pearce and Berger requested compensatory damages in excess of \$500,000.00, prejudgment interest, punitive damages, costs and attorneys' fees. Claimant further requested a dismissal of the counterclaim.

Respondents Bear Stearns, Connell, Pearce and Berger requested that the claims be dismissed and that they be awarded their fees, costs and other relief as may be appropriate as well as relief on their counterclaim and cross claim.

OTHER ISSUES CONSIDERED & DECIDED

The parties at the hearing agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc.

Pursuant to Rule 10101 of the Code the arbitration panel found subject matter jurisdiction over this entire controversy.

Respondent Ginsberg did not appear at the hearing. This arbitration panel found that there was not sufficient proof of service with respect to Respondent Ginsberg in the case file, as required under Rule 10314(a) of the Code, and that the parties did not provide proof of personal service upon Respondent Ginsberg at the hearing. The arbitration panel, therefore, determined to proceed with the hearing without Respondent Ginsberg present and determined to dismiss all claims against Respondent Ginsberg, without prejudice.

AWARD

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

1. Respondents Connell, Berger and Pearce are found not liable and, therefore, all claims against them are hereby dismissed.
2. Respondent Bear Stearns is found liable and shall pay to the Claimant the amount of \$650,000.00, inclusive of pre-judgment interest.
3. As stated in paragraph three (3) of "Other Issues" above all claims against Respondent Ginsberg, including the cross claim, are hereby dismissed without prejudice.
4. Claimant's requests for punitive damages, attorneys' fees and costs are hereby denied.
5. Respondents Bear Stearns, Connell's and Pearce's requests for attorneys' fees and costs are hereby denied.
6. Respondents Bear Stearns, Connell's and Pearce's counterclaim is hereby denied.
7. Respondent Bear Stearns shall pay to the Claimant the sum of \$1,000.00 representing reimbursement of the hearing session deposit previously paid to NASD Regulation, Inc. by the Claimant.

FORUM FEES

Pursuant to Rule 10332 of the Code, the arbitrators have assessed forum fees in the amount of \$8,300.00 (eight (8) hearing sessions x \$1,000.00 + one (1) pre hearing conference (with the Chairperson) x \$300.00).

1. Respondent Bear Stearns is hereby assessed forum fees in the amount of \$8,300.00 for which NASD Regulation, Inc. shall retain the \$1,000.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by Respondent Bear Stearns in the amount of \$7,300.00.
2. NASD Regulation, Inc. shall retain the claim filing fee of \$250.00 paid by the Claimant.
3. Respondent Bear Stearns shall pay to NASD Regulation, Inc. the sum of \$1,000.00 which represents the claim filing fees for the counterclaim of \$500.00 and the cross claim of \$500.00.
4. Respondent Bear Stearns shall pay to NASD Regulation, Inc. the sum of \$500.00 representing the member surcharge pursuant to Rule 10333 of the Code.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

Steven N. Ainbinder, Esq.

Public/Chairperson

/s/

John R. Camp, Jr., Esq.

Public/Panelist

/s/

Lester H. Weinberg

Industry/Panelist

Date of Decision: October 2, 1997