

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Toshiaki Saito and Shareen K. Saito, Claimants vs. LLC & Co., Inc., Bear Steams & Co., Inc.,
and Yan Skwara, Respondents.

Case Number: 95-03025

Hearing Site: Honolulu, HI

REPRESENTATION OF PARTIES

Claimants, Toshiaki Saito and Shareen K. Saito (hereinafter collectively referred to as "Claimants"): James T. Countiss, Esq., Green & Countiss, 700 Richards Street, Harbor Square, Suite 704, Honolulu, HI 96813

Respondent, Bear Steams & Co., Inc., ("Bear Steams"): Mark E. Lehman, Esq., Bear Steams & Co., Inc., 245 Park Avenue, 10th Floor, New York, NY 10167.

Respondent, LLC & Co., Inc., ("LLC"): Isaac M. Zucker, Esq., First Asset management, Inc., 67 Wall Street, New York, NY 10005; and *In Pro Per*, 600 Old Country Road, Suite 518, Garden City, New York 11530.

Respondent, Yan Skwara ("Skwara"): Isaac M. Zucker, Esq., First Asset management, Inc., 67 Wall Street, New York, NY 10005, and *In Pro Per*, 4694 W Point Loma, #6, San Diego, CA 92107, 480 E. 74th Street, Apt 2D, New York, NY 10021, 2038 W Royal Lane, #3146, Irving, TX 75063.

CASE INFORMATION

Statement of Claim filed on or about: June 22, 1995

Claimants, Toshiaki Saito and Shareen Saito, signed the Uniform Submission Agreement: May 19, 1995 and May 30, 1995, respectively

Statement of Answer filed by Respondents, Bear Steams, LLC and Skwara, on or about: August 23, 1995

Respondents, Bear Steams, LLC and Skwara, signed the Uniform Submission Agreement: August 21, 1995, August 22, 1995 and July 31, 1995, respectively

Amendment to Statement of Answer filed by Respondents, Bear Steams, LLC and Skwara, on or about: April 29, 1996

CASE SUMMARY

Claimants originally asserted the following causes of action: Violation of Section 10(b), Section 10b-5 and Section 20 of the Securities and Exchange Act of 1934; common law claims of fraud.

intentional misrepresentation, negligent misrepresentation; breach of fiduciary duty and breach of covenant of good faith and fair dealing; breach of written contract; professional negligence; violation of Rules 342, 401 and 405 of the New York Stock Exchange; violation of NASD Rules of Fair Practice and; violation of Section 485-14 of Hawaii's State Uniform Securities Act. The claims relate to trades allegedly made by Respondent Skwara while employed as a registered representative for Respondent LLC for whom Respondent Bear Stearns acted as a clearing firm.

Unless specifically admitted in its Answer, Respondents Bear Stearns, LLC and Skwara denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants failed to state a cause of action; Claimants assumed the risk; Respondents satisfied their obligations under the NYSE and NASD Rules; Claimants' claims are barred by the equitable doctrines of estoppel, unclean hands, ratification and waiver; Respondents had no discretion over Claimants' account; respondent acted in good faith and; any loss suffered by Claimants was the result of market conditions.

In May 1996, Claimants and Respondents Bear Stearns, LLC and Skwara purportedly settled this case as against all parties.

On July 23, 1996, Respondent, LLC, filed a Motion to Enforce Settlement. Respondent LLC filed a Renewed Motion to Enforce Settlement on October 16, 1997.

This case proceeded to an evidentiary hearing on October 16, 1997. At that time, the Panel took up for consideration the Respondents' Motion for Enforcement of Settlement based on Respondents' assertions that the case had been settled by prior counsel for the parties.

At the October 16, 1997 hearing, the Panel granted Respondent, Bear Stearns', Motion to Dismiss.

Following the October 16, 1997 hearing, the Panel found that the parties had repudiated the settlement prior to consummating any such settlement and, therefore, the arbitration would proceed on the merits. The Panel, however, recused itself based on the fact that it had received testimony and other evidence regarding the settlement.

On December 9, 1999, the case proceeded to arbitration on the merits on with the newly appointed and accepted Panel.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages
Punitive Damages

Interest

\$268,954

In a sum as determined by the
Panel.

\$42,037.86 at a rate of 10% from

Attorneys' Fees

Other Costs

Other Monetary Relief

Non-Monetary Relief

February 1, 1995

Reasonable attorneys' fees as determined by the Panel.

\$500 filing fees.

For costs of arbitration sessions, costs of expert witnesses, management fees and commissions, for out of pocket losses as determined by the Panel.

Rescission of all stock purchases and for other relief as deemed just and equitable by the Panel.

Respondents. Bear Stearns, LLC and Skwara requested:
Non-Monetary Relief

Dismissal of all claims

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file the undersigned Panel determined that Respondents LLC and Skwara have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Respondents LLC and Skwara present in accordance with the NASD Rule 103 IS of the Code of Arbitration Procedure (the "Code").

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents LLC and Skwara are jointly and severally liable and shall pay Claimants \$17,276.17 in compensatory damages, and shall pay Claimants \$4,463.02 in interest on the compensatory damages, for a total due of \$21,739.10.
2. Respondents LLC and Skwara are jointly and severally liable and shall pay Claimants \$16,800 in attorneys' fees.
3. Respondents LLC and Skwara are jointly and severally liable and shall pay Claimants \$3,700 in expert witness fees.
4. Respondent, LLC is solely liable and shall pay Claimants \$5,000 in general damages
5. All other claims are denied in their entirety

6. The Panel denied the Claimants' Motion to Enter Default as against Respondents LLC and Skwara, and instead, proceeded in accordance with Rule 10318 of the Code.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:
Initial claim filing fee = \$200

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge for Respondent LLC = \$350
Total member fees = \$350

Adjournment Fees

Adjournments requested during these proceedings:

January 29, 1996-January 31, 1996, adjournment by Claimants and Respondents LLC and Skwara = \$750
Waived
April 29, 1997-April 30, 1997 = \$1000
Written Off
September 18, 1997-September 19, 1997, adjournment by Respondent LLC = \$1000

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x 300 = \$300
Pre-hearing conference: September 6, 1996 1 session

Three (3) Pre-hearing sessions with Panel x \$750 = \$2250
Pre-hearing conferences: May 21, 1998 1 session
Pre-hearing conferences: October 1, 1999 1 session
Pre-hearing conferences: October 8, 1999 1 session

Eight (8) Hearing sessions x \$750 = \$6000
Hearing Dates: October 6, 1996 1 session

Hearing Dates	October 16, 1997	2 sessions
Hearing Dates	October 14, 1998	1 session
Hearing Dates	December 9, 1999	2 sessions
<u>Hearine Dates</u>	<u>December 10, 1999</u>	<u>2 sessions</u>
Total Forum Fees		= \$8550

The Panel has assessed \$3900 of the forum fees jointly and severally to Claimants.
The Panel has assessed \$4650 of the forum fees jointly and severally to Respondents LLC and Skwara.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. On October 22, 1999, Claimants, requested copies of a cassette tape of the October 16, 1997 hearing = \$15

Fee Summary

Claimants are hereby jointly and severally liable for:

Initial Filing Fee	= \$ 200
Forum Fees	= \$3900
<u>Administrative Costs</u>	<u>= \$ 15</u>
Total Fees	= \$4115
<u>Less payments</u>	<u>= \$1965</u>
Balance Due NASD Regulation, Inc.	= \$2150

Respondents, LLC and Skwara are hereby jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$4650</u>
Total Fees	= \$4650
<u>Less payments</u>	<u>= \$ 0</u>
Balance Due NASD Regulation, Inc.	= \$4650


Respondent, LLC is hereby solely liable for:

Member Fees	= \$ 350
<u>Adjournment Fee</u>	<u>= \$2000</u>
Total Fees	= \$2350
<u>Less payments</u>	<u>= \$2350</u>
Balance Due NASD Regulation, Inc.	= \$ 0

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 95-03025
Award Page 6 of 6

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

Concurring Arbitrators' Signatures



Harriette Holt
Public Arbitrator, Presiding Chair

1/10/2000

Signature Date

Robert E. Cooling
Public Arbitrator

Signature Date

Donald S. K. Chung
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Date Served:
JAN 14 2000

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 95-03025

STATE OF HAWAII

COUNTY OF Mau

On this 10th day of January, 2000, before me personally
appeared Harriette Holt to me known and known before me to be
the individual described in and who executed the foregoing instrument, and s/he duly acknowledged to me that s/he
executed the same.

MAVIS S. KUNITAKE

MAVIS S. KUNITAKE
Notary Public, 2nd Judicial Circuit, State of Hawaii

My commission expires 7-13-2001

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NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 95-03025
Award Page 6 of 6

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

Concurring Arbitrators' Signatures

Harmette Holt
Public Arbitrator, Presiding Chair

Signature Date

Robert E. Cooling
Public Arbitrator

January 10, 2000
Signature Date

Donald S. K. Chung
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Date Served:

JAN 14 2000

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 95-03035

STATE OF HAWAII) S.S.

COUNTY OF HONOLULU)

On this 10th day of JANUARY, 2000, before me personally
appeared ROBERT E. COOLING to me known and known before me to be
the individual described in and who executed the foregoing instrument, and ~~she~~ duly acknowledged to me that ~~she~~
executed the same.

Antoinette Mita
Notary Public, 1st Judicial Circuit, State of Hawaii
My commission expires Nov. 9, 2002

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 95-03025
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Concurring Arbitrators' Signatures

Harriette Holt
Public Arbitrator, Presiding Chair

Signature Date

Robert E. Cooling
Public Arbitrator

Signature Date


Donald S. K. Ching
Industry Arbitrator

1-7-00
Signature Date

Date of Service (For NASD office use only)

Date Served:

JAN 14 2000

STATE OF HAWAII

1 SS.

NOTARY PUBLIC

On this 7th day of January, 2000, before me personally
appeared DONALD S.K. CHING to me known and known before me to be
the individual described in and who executed the foregoing instrument, and who duly acknowledged to me that s/he
executed the same.

Cheryl Lee Inai
CHERYL LEE INAI

L.S.

Notary Public, Fifth, Judicial Circuit, State of Hawaii
My commission expires 1/30/2003