

9607069

**NASD AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the Matter of the Arbitration Between

John Elliott and  
Mary Mac Elliott,

**Claimants,**

-and-

No. 9504270

& Bear Stearns & Co., Inc.  
and Craig Allan Klinger,

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Securities Dealers, Inc.

**Respondents.**

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**REPRESENTATION OF PARTIES**

The Claimants, John Elliott and Mary Mac Elliott ("Claimants") were represented by John Dees, Jr. attorney at law located in Dallas, TX.

The Respondents, Bear Stearns & Co., Inc. and Craig Allan Klinger ("Respondents") were represented by Cheryl Moore, Esq. and Stephen Johnson, Esq. of Hill, Held, Metzger, Lofgren & Peele. L.L.P. located in Dallas, TX.

**CASE INFORMATION**

The Statement of Claim was filed by Claimants on or about September 6, 1995. Both Claimants' Submission Agreement were signed on August 28, 1995.

The Joint Statement of Answer was filed by Respondents on or about November 20, 1995. The Submission Agreement of Respondent Bear Stearns & Co., Inc. was signed on November 20, 1995 by Mark E. Lehman, Senior Managing Director. The NASD has no record of Respondent Craig Allan Klinger having filed a Submission Agreement.

**HEARING IN-FORMATION**

The hearings were held on May 15, 1996 for two (2) sessions and April 16, 1996 for three (3) sessions.

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## CASE SUMMARY

Claimants alleged financial damages as the proximate result of Respondent's conduct as their broker. **Specifically** Claimants alleged that Respondents breached their fiduciary duty, committed common law fraud, violated state and federal securities laws. Claimants also alleged unsuitability, misrepresentation and churning as detailed in their Statement of Claim.

Respondents denied all allegations set forth in the Statement of Claim. Respondents also asserted affirmative defenses including ratification, waiver, estoppel, and failure to set forth a cause of action upon which relief can be granted.

### RELIEF REQUESTED

Claimants requested that the panel award them such amounts as may be proved at hearing but not less than \$90,000.00 plus the interest incurred of approximately \$12,500.00, the diminution in value of the account of approximately \$150,000.00, plus the amount by which the account would have appreciated, had it been properly managed during -the time period, their legal fees, expenses and punitive damages.

Respondents asked that the Statement of Claim be dismissed and that the costs of the arbitration be assessed against Claimants.

### OTHER ISSUE CONSIDERED & DECIDED

Respondent Craig Allan Klinger did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the Claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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.

### 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). That the Claimants shall take nothing for their Claim against Respondents;
- (2). That other than forum fees which are addressed below, all claims not specifically awarded are hereby denied.

9607069

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were five (5) hearing sessions x \$750, for a total of **\$3,750.00** less the \$750 previously deposited by Claimants for a total due of **\$3,000.00** in forum fees. The forum fees shall be assessed to be paid evenly by Claimants and Respondents. Therefore Claimants shall pay \$1,875 .00 in forum fees and Respondents shall pay **\$1,125.00** in forum fees to the NASD.

Pursuant to Section 43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$200 previously deposited with the NASD by the Claimants. Pursuant to Section 45 of the Code, the Respondent Bear Stearns & Co., Inc. shall pay its \$350.00 member surcharge. .

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

Concurring arbitrators signatures:

Name:

7/17/96

Dated

7-17-96

Dated

7/19/96

Dated

For NASD Use Only

Date Award Served on the parties: July 28, 1996