

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Barry Edelstein
Marlene Edelstein
Barry Edelstein, C.F/David Edelstein
Barry Edelstein, C.F/Lyndsay Edelstein
Barry Edelstein, C.F/Daniel J. Edelstein

95-04429

Name of Respondents

Bear Stearns & Company
Kenneth F. Lebow
Rochelle Cohen

REPRESENTATION

For Claimants Barry Edelstein, Marlene Edelstein, David M. Edelstein, Lyndsay A. Edelstein and Daniel J. Edelstein (collectively referred to as "Claimants"), appeared Kenneth R. Resar, Esq., from the law firm of Riley, Koury & Resar, located in Lorain, Ohio.

For Respondents Bear, Stearns & Co. Inc. ("Bear Stearns"), Kenneth F. Lebow ("Lebow") and Rochelle Cohen ("Cohen") (collectively referred to as "Respondents"), appeared Daniel S. Taub, Esq., Managing Director of Bear, Stearns & Co. Inc.

CASE INFORMATION

Claimants' Statement of Claim was filed on September 13, 1995. Barry Edelstein's Submission Agreement was signed on September 12, 1995. Marlene Edelstein's Submission Agreement was signed on September 12, 1995. David M. Edelstein's Submission Agreement was signed by Barry Edelstein, as David M. Edelstein's parent and guardian, on September 12, 1995. Lyndsay A. Edelstein's Submission Agreement was signed by Barry Edelstein, as Lyndsay A. Edelstein's parent and guardian, on September 12, 1995. Daniel J. Edelstein's Submission Agreement was signed by Barry Edelstein, as Daniel J. Edelstein's parent and guardian, on September 12, 1995.

Joint Statement of Answer was filed on November 8, 1995. Bear Stearns's Submission Agreement was signed on November 3, 1995. Cohen's Submission Agreement was signed on December 13, 1995. Lebow did not file a Submission Agreement with the NASD.

HEARING INFORMATION

Hearing Dates/Sessions:

April 23, 1996

- 2 Sessions

The hearings were held at the Raddison Hotel in Cleveland, Ohio.

CASE SUMMARY

Claimants alleged that, in November of 1992, they established accounts with Bear Sterns and that, based upon the recommendations and advice of Respondents, they purchased shares of common stock of Allerion, Inc. ("Allerion").

Claimants alleged that Barry Edelstein, on behalf of all Claimants, remained in contact with Cohen on a daily basis to obtain updated information on Allerion. Claimants further alleged that Barry Edelstein was informed by Respondents that Bear Stearns had a close working relationship with the management of Allerion and that it had periodic meetings with the top management of Allerion to obtain information regarding the financial condition and continued investment prospects of the company.

Claimants alleged that, on or about December 24, 1993, the price for Allerion stock reached a year to date high of \$4.375 per share. Claimants further alleged at that time they owned a combined total of 14,800 shares of Allerion which was worth \$64,750.00. Claimants asserted that, on December 24, 1993, Barry Edelstein contacted Bears Stearns and requested that all of Claimants' Allerion shares be sold, but that Cohen advised him to delay selling their Allerion shares because Allerion was preparing for a public offering and the selling price of the additional shares would be set at \$7.00 to \$8.00 per share.

Claimants alleged that Barry Edelstein, on a continuing basis, requested any and all information with respect to the financial condition of Allerion. Claimants further alleged that Bear Stearns knew or should have known that the financial condition of Allerion was poor and that the risk of loss from purchasing and/or continuing to hold the stock of Allerion far outweighed any potential gains likely to be obtained from owning the stock. Claimants also alleged that Respondents' intentionally and with malice failed to disclose all of the information with respect to the financial condition of Allerion.

Claimants alleged that, during February 1994, Marlene Edelstein purchased 2,000 additional shares of Allerion for a price of \$6,176.89. Claimants further alleged that they would have immediately sold all of their Allerion shares if they had received information from Bear Stearns that Allerion would file for bankruptcy. Claimants asserted that, on or about November 23, 1994, Barry Edelstein sold 4500 Allerion shares for a net sales price of \$2,724.06. Claimants further asserted that the value of each Allerion share has been zero since December 7, 1994.

Respondents maintained that Claimants maintained an account with Cohen since 1985 and that, in 1991, when Cohen moved to the Bears Stearns office, Claimants allowed Cohen to take their accounts with her. Respondents also maintained that for seven years Barry Edelstein invested with Cohen in many "small cap" securities, options and traded aggressively in equities of all kind and that Barry Edelstein was a savvy investor who scrutinized each investment idea Cohen

presented to him.

Respondents alleged that, in early 1993, Cohen suggested to Barry Edelstein that he purchase stock in Allerion. Respondents further maintained that Cohen provided Barry Edelstein with the press releases from the company and their recent financial statements and that she discussed the company's difficulties with him. Respondents also denied that Cohen told Barry Edelstein to not sell Claimant's Allerion stock because she believed that there would be a secondary offering. Respondents further maintained that Cohen did recommend to all of her clients to hold the stock because it was up from the date it was purchased. Respondents contended that even Cohen was stunned and disappointed when Allerion filed for bankruptcy in December 1994.

RELIEF REQUESTED

Claimants requested an award against Respondents, jointly and severally, as follows:

1. Compensatory damages of \$68,202.83;
2. Punitive damages in an amount equal to \$341,014.15;
3. Attorneys' fees and other costs associated with this proceeding.

Respondents requested that the case be dismissed in all respects and that the costs and expenses of the hearing be charged to Claimants.

OTHER ISSUES CONSIDERED & DECIDED

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 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. Claimant, Barry Edelstein, acting on his own behalf and on behalf of his wife and minor children, opened non-discretionary accounts in 1985 with Bear Stearns & Co. Barry Edelstein commenced upon a course of trading securities. The great majority of the securities purchased for these accounts consisted of high risk positions, many in option trades of Mr. Edelstein's choice.
2. Mr. Barry Edelstein was a sophisticated investor, a certified public accountant and Vice President and Treasurer of Kopf Builders.
3. Mr. Edelstein knew that the security which was recommended to him by Ms. Cohen in early 1993, Allerion, Inc. (f.k.a. Ultimate Corp.) was a company in

serious financial difficulty from the onset of the investment. It was a "turn around company" whose stock was trading at slightly above \$2.00 per share. It was, like Mr. Edelstein prior investments, a high risk venture.

4. Any duty to disclose to Mr. Edelstein all material information about Allerion was more than satisfied by daily phone calls between Mr. Edelstein and Ms. Cohen. Mr. Edelstein's chief complaint, that Ms. Cohen had not sent him the actual press release which contained the disclosure that Allerion's accountants had rendered a qualified opinion on August 12, 1994 even if true, would not constitute a material breach of any duty Respondents had to Claimant. By his admission, Claimant knew that Allerion's accountants were going to issue a qualified opinion in the months before August, 1994 unless the company received a significant infusion of cash. He knew the company was in serious financial condition and in the process of selling assets to raise cash. He knew its outside directors had resigned.
5. There was no demonstrated incentive or motive for Cohen not to disclose to her client all available material information regarding the Allerion investment. If anything, the opposite was in effect; she would have financially benefitted from the sale of the Allerion investment (and purchase of a replacement security). By encouraging Claimant to hold his Allerion investment, she was operating against her financial interest; a further indication of good faith.
6. Because this was a non-discretionary account, and considering the sophistication and investment experience of the Claimant all decisions regarding the purchase or sale of Allerion must have been made and were made by Barry Edelstein on his behalf and on behalf of his immediate family, by his admission. Barry Edelstein knew and assumed the risks of his own investment decisions.
7. There was no claim nor evidence presented that this recommendation was unsuitable to the Claimants considering their overall investment objectives, net worth, risk comfort or the like. Likewise, there was no claim or evidence that the account was churned or that there was any unauthorized trading in the accounts.

For the foregoing reasons, the panel unanimously renders a decision in favor of Respondents and denying each of Claimants' claims.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the undersigned arbitrators have determined that the NASD shall retain the \$200.00 non-refundable filing fee previously submitted by Claimant and have assessed the following forum fees:

2 hearing sessions x \$750.00 = \$1,500.00

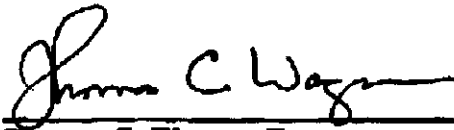
1. Claimants be and hereby are jointly and severally liable for the sum of \$750.00,

representing one-half of the forum fees assessed. Claimants previously deposited \$750.00 with the NASD, and, therefore, Claimants owe nothing to the NASD.

2. Respondent Bear, Stearns he and hereby is liable and shall pay to the NASD the sum of \$750.00, representing one-half of the forum fees assessed.

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

Concurring Arbitrators' Signatures



Thomas C. Wagner, Esq.
Chairperson-Public Arbitrator

Joseph W. Grossner
Public Arbitrator

Henry Ott-Hansen
Industry Arbitrator

Date of Decision: July 31, 1996

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