

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

Stephanie Whiston

95-04621

Name of Respondents

Bear Stearns & Company
Stephen Dantus
Vincent Dicks
Doug Duncan
Stephen Raphael
Jason Schwartz
George Sarner

REPRESENTATION

For Claimant Stephanie Whiston, ("claimant"), appeared Ruthann G. Niosi, Esq. of the Law offices of Ruthann G. Niosi, Esq., P.C., located in New York, New York.

For Respondents Bear Stearns & Co., Stephen Raphael, Jason Schwartz, George Sarner, Stephen Dantus, Vincent Dicks and Doug Duncan, collectively ("respondents"), appeared Kevin B. Leblang, Esq. and Izabel P. McDonald, Esq. of the firm Kramer, Levin, Naftalis & Frankel, located in New York, New York.

CASE INFORMATION

Statement of Claim filed: September 29, 1995.

Claimant's Submission Agreement signed on: July 21, 1995.

Joint Statement of Answer filed by Respondents: December 15, 1995.

Respondent Bear Stearns' Submission Agreement signed on: December 13, 1995.

Respondent Stephen Raphael's Submission Agreement signed on: January 30, 1996.

Respondent Jason Schwartz's Submission Agreement signed on: January 10, 1996.

Respondent George Sarner's Submission Agreement signed on: February 8, 1996.

Respondent Stephen Dantus' Submission Agreement signed on: February 5, 1996.

Respondent Doug Duncan's Submission Agreement signed on: January 30, 1996.

HEARING INFORMATION

Pre-Hearing Conferences:	April 18, 1996	-	1 session
	April 23, 1996	-	1 session
	April 26, 1996	-	1 session
	September 3, 1996	-	1 session
Hearing Dates/Sessions:	May 1, 1996	-	2 sessions
	May 2, 1996	-	2 sessions
	September 4, 1996	-	2 sessions
	September 6, 1996	-	2 sessions
	September 11, 1996	-	2 sessions
	September 12, 1996	-	2 sessions
	December 9, 1996	-	2 sessions
	December 10, 1996	-	1 session
	December 16, 1996	-	2 sessions
	January 23, 1997	-	2 sessions
	January 24, 1997	-	2 sessions
	January 30, 1997	-	2 sessions

Hearing Location: The hearings were held at the offices of NASD Regulation, Inc. located in New York City and at other nearby hearing locations.

CASE SUMMARY

Claimant alleged that prior to joining Bear Stearns she was a well educated, experienced independent broker with Smith Barney. Claimant further alleged that on or about April 15, 1993 she began to be recruited away from Smith Barney to Bear Stearns. Claimant contended that, on that date, she interviewed with Respondent Jason Schwartz, an Associate Director of Bear Stearns, who represented to her that if she accepted a position with Bear Stearns, she would be paid in accordance with the Bear Stearns written Registered Representative Commission Payout Schedule. Claimant further contended that the schedule reflected payouts which were higher than what was then currently available at Smith Barney. Claimant asserted that respondent Schwartz indicated that if she was interested in pursuing an opportunity of working as a broker at Bear Stearns then the next step would be to meet the man who would be her branch manager, a senior managing director and partner of the firm, George Sarner. Claimant alleged that during the course of the meeting, respondent Sarner reassured Claimant that if she went to work at Bear Stearns her pay-out would be as indicated on the commission grid as given to her by respondent Schwartz, and then suggested to claimant that he wanted her to meet some fellow brokers who worked for Bear Stearns. Claimant further alleged that Sarner began by introducing her to Stephen Raphael, who was then a Senior Manager and later became a director of the firm. Claimant contended that on or about April 28, 1995 she met respondent Raphael and he told her that she would make more in commissions with the greater payout at Bear Stearns and suggested that she accept respondent Schwartz's and Sarner's offer of employment.

Claimant alleged that subsequent to these conversations in connection with her employment, she was offered, and accepted in the manner proscribed by Mr. Duncan, a benefits representative of Bear Stearns, numerous benefits such as three times prior years earnings in life insurance, medical benefits, disability coverage, and the like. Claimant further alleged that the choices in benefits presented to her appeared to be in standard Bear Stearns document form.

Claimant contended that on or about May 14, 1995, in specific reliance upon the representations and promises that had been made to her, she resigned from her position at Smith Barney, moved approximately 133 customers from Smith Barney to Bear Stearns, and took what she believed to be a position of a full time self producing registered representative at Bear Stearns. Claimant further contended that instead, she worked under and for Raphael, who was in turn credited with 100% of her production and, instead of being paid in accordance with the grid like other independent brokers, her pay was discretionary, at a much lower payout, and came from Raphael. Claimant alleged that she was not a participant in the benefits as she was led to believe she would be. Claimants further alleged that she became what was referred to at Bear Stearns as a "J file employee."

Claimant contended that, in addition, during this time she was working in an environment permeated with sexual harassment and ethnic slurs. Claimant alleged that on or about March 13, 1995, she was asked if she wanted to file a sexual harassment claim against respondent Raphael.

Claimant asserted that April 12, 1995 was her last day of employment at Bear Stearns and on April 13, 1995 she started as a self-producing broker at Oppenheimer & Co. Claimant alleged that there was a blatant scheme to defraud and dupe her into accepting employment with Bear Stearns by its employees, who, acting individually and in concert, lead her to believe that she would be a self-producing broker and would be paid in accordance with the commission grid applicable to all other Bear Stearns brokers. Claimant further alleged that she would not have accepted the job which Bear Stearns subsequently demanded she perform, and which she did perform, unless she were to be compensated with wages and benefits as described to her in the first instance.

Claimant contended that each of the respondents were aware of the true employment situation and conspired to conceal same from her to their advantage and her detriment. Claimant further contended that, instead of the job she was induced to accept, she met with the anxiety and pressure of working in a harassment charged environment, for less money and without the benefits associated with being a self-producing broker of Bear Stearns.

Respondents categorically and unequivocally denied all allegations that claimant was misled regarding the terms of her employment, that she was denied benefits to which similarly situated employees of Bear Stearns were entitled, that she was not paid the commissions she was owed by Bear Stearns and that she was sexually harassed by any employee of Bear Stearns.

Respondents maintained that claimant initiated contact with Jason Schwartz, who managed Raphael's office and told claimant that she would be working with Stephen Raphael, that Raphael would help her develop her clients, and that claimant would benefit from Raphael's extensive experience in the business.

Respondents further maintained that claimant also met with Raphael to discuss the position for which she applied and Raphael informed claimant, who was very interested in knowing what her compensation would be if she were hired to work with Raphael, in no uncertain terms, that her commission payout generally would be 31 percent, and for some clients it would be less.

Respondents contended that at no time did either Raphael, Schwartz or Sarner provide claimant with a "commission schedule" in the form attached to the Statement of Claim as Exhibit 1, and at no time did

respondents ever represent to claimant that she would receive a payout as indicated on the commission schedule delineated on Exhibit 1 to the Statement of Claim.

Respondents further contended that the commission schedule indicated on Exhibit 1 to the Statement of Claim was indeed the payout schedule for independent brokers hired by Bear Stearns. Respondents maintained that claimant, however, was not hired by Bear Stearns to be an independent broker. Respondents further maintained that claimant's \$4.8 million asset base while she was a trainee broker at Smith Barney did not qualify her to be a traditional broker at Bear Stearns.

Respondents contended that claimant could not reasonably believe that she was hired by Bear Stearns as a traditional, independent broker. Respondents further contended that claimant spoke not only with Raphael and Schwartz about the position and the payout she would receive, but also spoke with Herbert Zucker, a registered representative in Raphael's group, who told claimant about his compensation arrangement with Raphael; a 31 percent payout.

Respondents maintained that once claimant began to work at Bear Stearns, all of her trades were journaled to a joint account number that was assigned to her and Raphael. Respondents further maintained that Duncan, the Office Manager and a Managing Director, who routinely explains to brokers their payment arrangements and benefits, upon meeting claimant, told her that her trades would be journaled to her and Raphael's joint account number. Respondents contended that claimant did not question this procedure when Duncan explained it to her; in fact, respondents know of no instances when she ever questioned this procedure.

Further, respondents contended that they know of no instances when claimant complained about being misled with regard to her compensation. Respondents maintained that there can be no doubt that claimant, who shared the same office as all the other registered representatives in Raphael's group, knew that the other brokers in Raphael's group were compensated at the same 31 percent rate as she.

Further, respondents maintained that claimant took full advantage of numerous privileges she surely knew were not available to traditional Bear Stearns brokers. Respondents contended that claimant, who sat at a desk situated within the large common office that houses members of Raphael's group that is separate from the main open space that houses the desks of Bear Stearns' other brokers, consulted with Raphael regularly regarding planning trading strategies and developing business. Respondents maintained that Raphael actually gave claimant some accounts, including accounts of his friends and business acquaintances and that fees and other expenses that were deducted from traditional Bear Stearns brokers' payouts were not passed on to claimant, and, unlike traditional Bear Stearns' brokers, claimant was given full payout on discounted trades. Respondents further maintained that the fact that claimant benefitted from her association with Mr. Raphael is evident by the fact that she had more clients and earned more money with Raphael than with Smith Barney.

Respondents contended that once claimant was satisfied that she had developed a sufficient client base, she decided to leave Bear Stearns with the clients and contacts Raphael had helped her to get, and take them to her new employer, Oppenheimer. Respondents further contended that now she challenges the compensation arrangement applied to her, which she accepted and agreed to, and under which she developed the very client base she attempted to take away from Bear Stearns.

Respondents maintained that claimant was never denied any of the benefits to which all similarly situated brokers were entitled; in fact, she was assured by Raphael that her benefits were in place during her employment with Bear Stearns. Respondents further maintained that claimant was not denied any commissions she was owed for her last few months of production at Bear Stearns. Respondents contended that the head of the Bear Stearns payroll department reviewed the commissions claimant earned during those last few months until she was entirely satisfied that she was compensated for all the trades she executed.

Respondents denied subjecting claimant to any sexual harassment and maintained that when claimant was asked pointedly whether she had a sexual harassment complaint to lodge, she stated she had none.

RELIEF REQUESTED

Claimant requested: an award of \$119,377.00 plus \$72,000.00 in attorney's fees and expenses, plus any other award the arbitrators deem appropriate.

Respondents requested: that all claims be dismissed, that they be awarded their attorneys' fees and other costs incurred in defending this action and that they be granted any other and further relief to which they may be entitled.

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 on file with NASD Regulation, Inc.

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 against the respondents be and hereby are denied.
2. Each party shall bear its respective costs, including attorneys' fees.
3. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section Rule 10205 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500 non-refundable filing fee deposited by the claimant and have assessed the following forum fees:

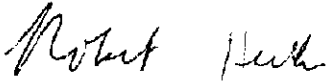
4 pre-hearing conferences	x	\$300.00 =	\$1,200.00
23 hearing sessions	x	\$750.00 =	\$17,250.00
Total forum fees assessed			\$18,450.00

Claimant be and hereby is liable for \$9,225.00 representing one half of forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation, Inc. Therefore, claimant owes \$8,475.

Respondents be and hereby are jointly and severally liable for \$9,225.00 representing one half of forum fees assessed.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

A handwritten signature in cursive script, appearing to read "Robert Herschman".

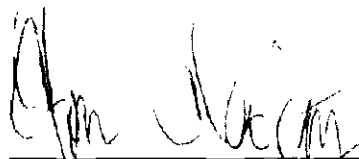
Robert D. Herschman, Esq.

I, Robert D. Herschman, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

A handwritten signature in cursive script, appearing to read "Robert Herschman".

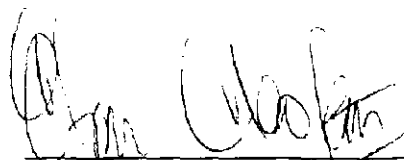
Robert D. Herschman, Esq.

DATE OF DECISION: APRIL 1, 1997



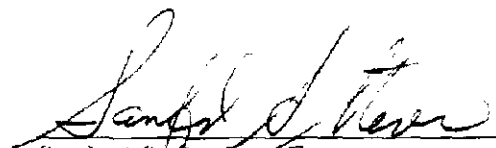
Efron Cleofe, III

I, Efron Cleofe III, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

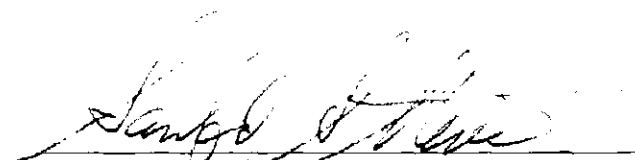


Efron Cleofe, III

DATE ~~06~~ DECISION: APRIL 1, 1997


Sanford S. Stevens, Esq.

I, Sanford S. Stevens, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Sanford S. Stevens, Esq.

DATE OF DECISION: APRIL 1, 1997