

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimants

Johnny Kegler

vs.

Case No.

95-05019

Names of Respondents

Bear Stearns & Company
Fidelity Brokerage Services, Inc.
Tyrone Burroughs

REPRESENTATION

For Claimant Johnny Kegler ("Claimant") appeared Richard G. Curtis, Esq. of the law firm Lacy Katzen Ryen & Mittleman, LLP located in Rochester, New York.

For Respondents Bear Stearns & Company ("Bear Stearns") and Tyrone Burroughs ("Burroughs") appeared William C. Mallery, Esq., in-house counsel for Respondent Bear Stearns.

For Respondent Fidelity Brokerage Services, Inc. ("Fidelity") appeared Michael G. Shannon, Esq. of the law firm Phillips Lytle Hitchcock Blaine & Huber located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on October 18, 1995. Claimant's Submission Agreement was signed on October 17, 1995.

A Joint Statement of Answer was filed by Respondents Bear Stearns and Burroughs on January 4, 1996. Respondent Bear Stearns' Submission Agreement was signed on January 2, 1996. Respondent Burroughs' Submission Agreement was signed on January 22, 1996.

Respondent Fidelity filed a Statement of answer on January 4, 1996. Respondent Fidelity's Submission Agreement was signed on January 2, 1996.

HEARING INFORMATION

Hearing Dates/Sessions:	January 20, 1998	-	Two Sessions
	January 21, 1998	-	Two Sessions

The hearing was conducted at the Raddison Downtown located in Buffalo, New York.

CASE SUMMARY

Claimant alleged that in July 1994, Respondent Burroughs, acting as an agent for Respondent Bear Stearns, persuaded Claimant to liquidate all of his investments held by Respondent Fidelity, transfer the sums to an account with Respondent Bear Stearns for the purchase of Eastman Kodak Company stock. Claimant also alleged that, in reliance on Respondent Burroughs' advice that the funds would be transferred in time to pay for the Eastman Kodak stock, he authorized Respondent Burroughs to effectuate the liquidation of Claimant's investments at Respondent Fidelity and the transfer the proceeds to Claimant's account with Respondent Bear Stearns. Claimant further alleged that he authorized the purchase of the Eastman Kodak Stock on margin because Respondent Burroughs assured Claimant that the transfer would take place in time for Claimant to cover the margin loan at no cost to Claimant. Claimant asserted that on or about August 8, 1994, Respondent Fidelity delivered to Respondent Bear Stearns Claimant's money market funds of \$153.37, but did not liquidate Claimant's mutual funds, valued at \$100,891.31. Claimant also asserted that Respondents Burroughs and Bear Stearns knew or should have known that the ACATS process was not the appropriate method to liquidate Claimant's mutual funds.

Claimant further asserted that for the next nine months, he had numerous discussions with representatives of Respondent Fidelity and with Respondent Burroughs regarding the transfer of his assets. Claimant contended that during this time, Claimant's account with Respondent Fidelity decreased in value dramatically. Claimant maintained that, as a result of the delay in the transfer of the funds from Respondent Fidelity to Respondent Bear Stearns, Claimant incurred significant damages and interest costs on the margin loan to purchase Eastman Kodak Company stock.

Respondents Bear Stearns and Burroughs denied liability and asserted seven affirmative defenses. Respondents Bear Stearns and Burroughs maintained that when Respondent Fidelity transferred \$153.37 to Respondent Bear Stearns, Respondent Burroughs explained to Claimant on or about August 8, 1994 that Claimant was required to contact Respondent Fidelity directly if he wished the mutual funds liquidated. Respondents Bear Stearns and Burroughs also maintained that any delay in liquidating these mutual funds at Respondent Fidelity was due solely to Claimant's failure to properly instruct Respondent Fidelity to liquidate the funds. Respondents Bear Stearns and Burroughs also maintained that Claimant received regular notice of the status of his accounts from both Respondents Fidelity and Bear Stearns, yet failed to do anything to liquidate his mutual funds. Respondents Bear Stearns and Burroughs asserted that Claimant intentionally and grossly inflated his damages. Respondents Bear Stearns and Burroughs also asserted that Claimant alone is responsible for the margin charges he incurred in his account with Respondent Bear Stearns.

Respondent Fidelity denied liability to Claimant. Respondent Fidelity maintained that Claimant, through Respondent Bear Stearns, sent Respondent Fidelity inaccurate instructions. Respondent Fidelity also maintained that it sent notices for seven months that the transfer had not occurred. Respondent Fidelity further maintained that it offered to effect a redemption, but Claimant initially refused. Respondent Fidelity contended that it was not until over seven months of sending the incorrect transfer request, that Claimant finally redeemed his shares.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$26,103.63, interest on the margin loan in the amount of \$1,243.30, attorneys' fees, costs and expenses, and such other and further relief as the arbitrators deemed appropriate.

Respondents Bear Stearns and Burroughs requested that the Statement of Claim be dismissed and the costs of this proceeding be assessed against Claimant.

Respondent Fidelity requested that the Claimant's claims against them be dismissed.

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 original remains 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. Claimant is awarded a total of \$21,000.00 in accordance with paragraphs two, three and four below.
2. Respondent Bear Stearns is hereby liable and shall pay to Claimant the sum of \$8,400.00 in compensatory damages, plus post-judgement interest at the rate of 9% per annum.
3. Respondent Fidelity is hereby liable and shall pay to Claimant the sum of \$8,400.00 in compensatory damages, plus post-judgement interest at the rate of 9% per annum.
4. Respondent Burroughs is hereby liable and shall pay to Claimant the sum of \$4,200.00 in compensatory damages, plus post-judgement interest at the rate of 9% per annum.
5. Each party shall bear its respective costs, including attorneys' fees.
6. All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the *Code of Arbitration Procedure*, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$100.00 non-refundable filing fee previously submitted by Claimant, and have assessed the following forum fees:

4 Hearing Sessions x \$400.00 = \$1,600.00

1. Claimant is hereby liable and shall pay the sum of \$800.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$400.00 with NASD Regulation, Inc., therefore, Claimant shall pay the balance of \$400.00.
2. Respondents Bear Stearns, Fidelity and burroughs are hereby jointly and severally liable and shall pay the sum of \$800.00, representing one-half the total amount of forum fees assessed.

3. Claimant is hereby liable for the sum of \$400.00 for a postponement fee. Claimant has submitted the sum of \$300.00, and, therefore, owes the balance of \$100.00.
4. Respondent Bear Stearns is hereby liable for the sum of \$200.00 for the Member Surcharge. Respondent Bear Stearns has not submitted the sum of \$200.00, and, therefore, owes the Member Surcharge.
5. Respondent Fidelity is hereby liable for the sum of \$200.00 for the Member Surcharge. Respondent Fidelity has submitted the sum of \$100.00, and, therefore, owes the balance of \$100.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

I, David Buch, Esq., 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.



David Buch, Esq.

Public Arbitrator - Chairperson

I, John P. DeLuca, 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.

John P. DeLuca

Public Arbitrator

I, Richard A. Scalfani, 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.

Richard A. Scalfani

Industry Arbitrator

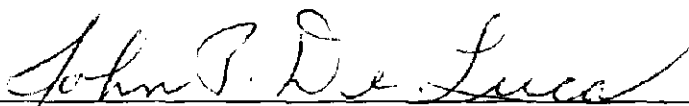
Date of Decision: March 2, 1998

ARBITRATORS' SIGNATURES

I, David Buch, Esq., 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.

David Buch, Esq.
Public Arbitrator - Chairperson

I, John P. DeLuca, 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.



John P. DeLuca
Public Arbitrator

I, Richard A. Scalfani, 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.

Richard A. Scalfani
Industry Arbitrator

Date of Decision: March 2, 1998

ARBITRATORS' SIGNATURES

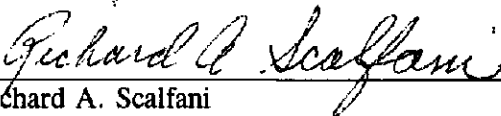
I, David Buch, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

David Buch, Esq.
Public Arbitrator - Chairperson

I, John P. DeLuca, 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.

John P. DeLuca
Public Arbitrator

I, Richard A. Scalfani, 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.



Richard A. Scalfani
Industry Arbitrator

Date of Decision: March 2, 1998