

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Meredith Capital Partners, L.P.

95-05824

Name of Respondents

Bear Stearns & Company  
Fred Kelleher

REPRESENTATION

For Claimant Meredith Capital Partners, L.P. appeared Jack Meredith located in Hilton Head Island, SC.

For Respondents Bear Stearns & Co. ("Bear Stearns") and Fred Kelleher ("Kelleher") appeared Terry Weiss, Esq. of Long, Aldridge & Norman located in Atlanta, GA.

CASE INFORMATION

The Statement of Claim was filed on December 19, 1995. Claimant's Submission Agreement was also signed on December 19, 1995.

A Joint Statement of Answer was filed by Respondents Bear Stearns and Kelleher on April 23, 1996. Respondent Bear Stearns's Submission Agreement was signed on April 22, 1996. Respondent Kelleher's Submission Agreement was signed on April 23, 1996.

HEARING INFORMATION

Pre-hearing Dates/Session: January 6, 1996 1 Session

Hearing Dates/Sessions: January 9, 1997 2 Sessions

The Hearing was held at the Nikko Hotel located in Atlanta, GA.

CASE SUMMARY

Claimant stated that on January 30, 1996 Kelleher recommended Grupo Sidek Class B shares, and not ADRs, which he allegedly stated had been recommended by the firm. According to claimant, it learned after the purchase, that commissions were four times higher on B shares than on ADRs, that the B shares were less liquid and there was a substantial cost to convert the B shares into ADRs. Further claimant stated that Kelleher said the commission would be \$0.03 per shares but in fact were \$0.05 per shares. Claimant alleged that Kelleher failed to correctly implement a short order on Grupo Sidek which resulted in a loss.

Claimant contended that on February 8, 1995 he called Kelleher with an order to purchase 50 Amgen call options. Claimant further contended Kelleher had called minutes later stating that he had bought the wrong calls not that he had purchased twice as many as instructed, which is what allegedly occurred. As a result of this error, claimant's account was supposedly put on a 90 day restriction and he claimed he was not notified of this status on his account.

On the same day claimant allegedly placed an order for 10,000 Grupo Sidek's B ADRs. Kelleher supposedly called claimant several days later and said claimant needed to wire additional funds to cover the transaction or the transaction would be canceled. Claimant stated since he was unable to secure all of the funds the transaction was canceled and that 4780 shares were purchased but not marked "as of" trades.

Claimant stated that it complained to Respondent Bear Stearns and that he felt the response did not address his complaints.

Respondents maintained that in or about August of 1994, claimant, a sophisticated investment hedge fund, established an account with respondents. Respondents maintained that Kelleher never recommended the purchase of Grupo Sidek shares nor to effect short sales. They further denied that they made a misrepresentation or omission of material fact relating to Grupo Sidek. Kelleher further maintained that he never had an extensive discussion on the risklessness of arbitrage with claimant as alleged in the Statement of Claim. According to respondents, claimant received a substantial discount on commissions for almost all transactions.

With respect to the Grupo Sidek transactions, respondents claimed that they informed claimant that it was not possible to effect a short sale in the B shares and that when claimant requested a short sale of the ADRs, they informed him it was a transaction over \$150,000 and asked him to confirm he wanted to execute this transaction. They claimed claimant responded affirmatively. Kelleher maintained that he discussed the losses claimant was incurring as the price increased and that claimant made an informed decision to trade the ADRs and that it was not an order error as alleged in the Statement of Claim.

According to respondents it was claimant who stated that an error had been made on the order for Amgen calls. Respondents denied telling claimant that the options had already been sold and insisted that they informed claimant that the options had appreciated in value. Respondents argued that claimant ratified the purchase when it ordered the sale of those options which resulted in the 90 day restriction.

Respondents stated that claimant was free to deposit additional funds in order to effect the February 27, 1995 purchase of Grupo Sidek and that when no additional funds were deposited respondents canceled the order and purchased as much as the account had funds available.

Respondents maintained that they never exercised any discretion over the transaction and that claimant made all investment decisions.

Respondents asserted as affirmative defenses failure to state a cause of action, ratification, losses as a direct and proximate result of claimant's actions, failure to mitigate, assumption of risks, losses due to market fluctuations, respondents acted in good faith and in accordance with all applicable securities laws, and claimant is precluded by law from recovering punitive damages.

### **RELIEF REQUESTED**

Claimant requested \$18,475.11 for the order error, \$6,250.00 on the lost profit, \$11,745.00 for the erroneous sellout and punitive damages of \$75,000.00. Claimant also requested nonspecified damages for the agreed commission rate and for the number of ADR shares that should have been purchased.

Respondents requested the Statement of Claim be dismissed in its entirety and that all costs and expenses be assessed against claimant.

### **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 the 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. Claimant's claims are denied in their entirety.
2. Claimant's request for punitive damages is hereby denied.
3. Each party shall bear their own costs including attorney's fees.

### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the panel has determined that NASD Regulation, Inc. shall retain the \$200.00 non-refundable filing fee and has assessed the following Forum Fees:

1 Pre-hearing Session x \$300.00	= \$ 300.00
2 Hearing Sessions x \$750.00	= \$1,500.00
Total outstanding	= \$1,800.00

The arbitrators have determined that Claimant shall be liable for one-half of the outstanding forum fees and that Respondents Bear Stearns and Kelleher shall be jointly and severally liable for one-half of the outstanding forum fees.

Therefore Claimant be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$900.00 less \$320.00 credit in its account, net \$580.00 due.

Therefore Respondents Bear Stearns and Fred Kelleher be and hereby are jointly and severally liable to and shall pay to NASD Regulation, Inc. the sum of \$900.00.

Fees are payable to the NASD Regulation, Inc.

ARBITRATORS SIGNATURES



---

A. Keith Logue  
Public Chairman

---

Chesley V. Morton, Jr.  
Industry Panelist

---

David D. Brown, Esq.  
Public Panelist

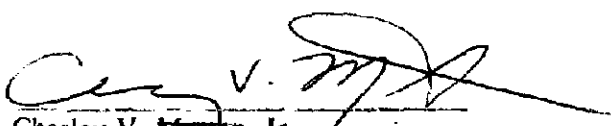
RECIPIENTS:

A. Keith Logue, Esq.

ARBITRATORS SIGNATURES

---

A. Keith Logue  
Public Chairman



---

Chesley V. Morton, Jr.  
Industry Panelist

---

David D. Brown, Esq.  
Public Panelist

RECIPIENTS:

A. Keith Logue, Esq.

ARBITRATORS SIGNATURES

---

A. Keith Logue  
Public Chairman

---

Chesley V. Morton, Jr.  
Industry Panelist

A handwritten signature in cursive script, appearing to read "David D. Brown", written over a horizontal line.

David D. Brown, Esq.  
Public Panelist

RECIPIENTS:

A. Keith Logue, Esq.