

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

William H. Fuller

Claimant

NASD Arbitration
No. 96-00751

v.

Josephthal, Lyon & Ross, Inc.,
Bear Stearns Securities Corporation

Respondents

REPRESENTATION OF PARTIES

William H. Fuller ("**Claimant**") was represented by Richard D. Turner, Esq., Eisenhower & Carlson, Tacoma, Washington.

Josephthal, Lyon & Ross, Inc. and Bear Stearns Securities Corporation ("**Respondents**") were represented by Brian J. Neville, Esq., Josephthal, Lyon & Ross, Inc., New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about February 16, 1996. Claimant's Submission Agreement was signed on February 7, 1996.

The Joint Statement of Answer for Josephthal, Lyon & Ross, Inc. and Bear Stearns Securities Corporation was filed on or about April 11, 1996. The Submission Agreement for Josephthal, Lyon & Ross, Inc. was signed on April 9, 1996. The Submission Agreement for Bear Stearns Securities Corporation was signed on April 9, 1996.

HEARING INFORMATION

The hearing was held on October 21, 1996 in Seattle for a total of 2 sessions.

CASE SUMMARY

Claimant alleges that he was induced by the Respondents to invest in an Initial Public Offering, Mercantile Financial Services, Inc.. Claimant further alleges that following the wire transfer to cover the purchase, no delivery of stock or credit was ever made to his account. Claimant alleges that the Respondents liability arises from a breach of contract and a breach of fiduciary duty.

The Respondents denied the allegations set forth in the Statement of Claim. The Respondents specifically argued that the wire transfer was instituted and carried out per Claimant's instructions and that any liability for the failure to deliver the stock rests with a third party.

RELIEF REQUESTED

Claimant requested an award in the amount of \$17,644.81 plus interest, attorney's fees and costs. Additionally, Claimant requested an award of treble damages to a limit of \$10,000.00.

Respondents requested that the claims asserted against them be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. 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 and the post-hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Josephthal, Lyon & Ross, Inc. is liable and shall pay to Claimant the sum of \$17,644.81.
2. Respondent Josephthal, Lyon & Ross, Inc. is liable and shall pay to Claimant the sum of \$3,271.78 representing interest current as of December 1, 1996. Interest shall accrue at 3.87 per day after December 1, 1996.
3. Respondent Josephthal, Lyon & Ross, Inc. is liable and shall pay to Claimant the sum of \$8,000.00 representing attorney's fees [RCW sec.21.20.430].
4. The Respondents' Motion to Dismiss is granted as to Bear Stearns Securities Corporation only.
5. Claimant's request for an award of treble damages is denied.

FORUM FEES

Forum fees are calculated at the rate of \$300 per hearing session and \$300 for each prehearing conference, if any. There were 2 sessions x \$300 = \$600 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the

parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. Pursuant to § 43(c) of the Code of Arbitration Procedure, all forum fees are assessed against Josephthal, Lyon & Ross, Inc..

Total Fees

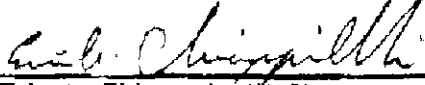
2 Hearing Sessions @ \$300.00 ~	\$600.00
Total	<u>\$600.00</u>

Pursuant to §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$100 and shall refund as forum fees the hearing session deposit in the amount of \$300 previously deposited with the NASD by the Claimant William H. Fuller.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fees in the amount of \$300 previously paid by Josephthal, Lyon & Ross Inc. and Bear Stearns Securities Corporation.

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

Dated:


Eric A. Chiappinelli, Esq.
Public Arbitrator, Presiding Chair

December 13, 1996

Date Served: 12/13/96