

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Edmund J. Scanlan

96-00814

Name of Respondents

Bear Stearns & Co., Inc.;
Michael A. Mauskopf

REPRESENTATION

For Claimant: Edmund J. Scanlan ("Scanlan") was represented by Patrick J. Sherlock, Esq. of Chicago, Illinois.

For Respondents: Bear Stearns & Co., Inc. ("Bear Stearns") and Michael A. Mauskopf ("Mauskopf") were represented by Nicholas P. Iavarone, Esq. of Bellows & Bellows, located in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: February 23, 1996.

Claimant's Submission Agreement signed on: February 14, 1996.

Statement of Answer filed by Respondents on: April 18, 1996.

Respondent Bear Stearn's Submission Agreement signed on: April 15, 1996 by Mark E. Lehman, Senior Managing Director, Bear Stearn & Co., Inc.

Respondent Mauskopf's Submission Agreement signed on: April 12, 1996.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: March 3, 1997 for Two (2) sessions;
March 4, 1997 for Two (2) sessions; and
April 16, 1997 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Scanlan alleged that Respondent Mauskopf, while employed by or acting as an agent for Respondent Bear Stearns, disregarded Scanlan's conservative investment objectives and persuaded Scanlan to invest in selling short positions in stocks. Based upon the allegations presented in the Statement of Claim, Scanlan asserted claims for breach of fiduciary duty and fraud.

Respondents denied the material allegations of the Statement of Claim, asserting that Scanlan was an experienced investor and attorney who understood risk, was suitable for the transactions conducted and exercised his own judgment in making all transactions. In addition, Mauskopf discussed all transactions with Scanlan, including sending written materials about the investments discussed. Furthermore, Respondents asserted several affirmative defenses.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents for \$70,000.00 or such damages as proved at arbitration; assessing all forum fees against Respondents; costs; interest; attorneys' fees; and such other relief as the Panel found reasonable.

Respondents requested that the Statement of Claim be denied and that an award of costs, including reasonable attorneys' fees, be entered against the 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.

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. The Statement of Claim is dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and

3. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Respondent Bear Stearns & Co., Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the \$300.00 member surcharge pursuant to Section 10333 of the Code of Arbitration Procedure.

The Office of Dispute Resolution shall retain the \$500.00 postponement fee paid by Claimant Edmund J. Scanlan.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Five (5) hearing sessions x \$500.00 per hearing session = \$2,500.00.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$150.00 non-refundable filing fee and shall retain as forum fees the \$500.00 hearing session deposit and a \$100.00 additional sum for Postponement previously paid by Claimant Edmund J. Scanlan. In addition, Claimant Edmund J. Scanlan is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the additional sum of \$1,900.00 as forum fees.

Concurring Arbitrators' Signatures

Name

Date

/s/ Herbert S. Channick, Esq.

May 12, 1997

Herbert S. Channick, Esq.

Public Arbitrator/Chairperson

/s/ Mary Beth Wheeler, Esq.

May 13, 1997

Mary Beth Wheeler, Esq.

Public Arbitrator

/s/ Edward M. Roob

May 12, 1997

Edward M. Roob

Industry Arbitrator