

N.A.S.D. REGULATION, INC. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

**Lloyd Muller (deceased), Corinne R. Muller
and Brad H. Muller**

96-01426

Names of Respondents

**J. Gregory & Company, Inc.
Nicholas R. Salerno
Thomas C. Johnson, Jr.
Vincent Mongno
Dianne A. Borden
Lorette D. Farris
Warren R. Schreiber
Bear Stearns Securities Corp.
The Estate of James Mongno**

REPRESENTATION

For Claimants: Richard W. Groner, Esq. and Steele T. Williams, Esq. of the law firm of Groner & Schieb, Sarasota, Florida.

The Respondents Dianne A. Borden ("Borden"), Vincent Mongno ("Mongno"), Nicholas Salerno ("Salerno"), Lorette D. Farris ("Farris") and the Estate of James Mongno appeared pro se.

For Respondent J. Gregory & Company, Inc. ("Gregory"): Jeffrey Herzberg, Esq. of the law firm of Flower & Medallie, Bay Shore, NY.

For Respondent Bear Stearns Securities Corp. ("Bear Stearns"): James M. Hubbert, Esq., in-house counsel at Bear Stearns.

For Respondent Thomas C. Johnson, Jr. ("Johnson"): Terrance A. Bostic of the law firm of Akerman, Senterfitt & Eidson, P.A., Tampa, FL.

For Respondent Warren E. Schreiber ("Schreiber"): Nancy Van Sant, Esq. of the law firm of Hornsby, Sacher, Zelman, Stanton, Paul & Beiley, P.A., Miami, FL.

CASE INFORMATION

Statement of Claim filed: April 1, 1996.

Claimants' Submission Agreement signed on: March 29, 1996.

Statement of Answer filed by Respondent Mongno on: August 9, 1996.

Respondent Mongno's Submission Agreement signed on: August 9, 1996.

Statement of Answer filed by Respondent Borden on: August 9, 1996.

Respondent Borden's Submission Agreement signed on: August 9, 1996.

Statement of Answer filed by Respondent Bear Stearns on: August 20, 1996.

Respondent Bear Stearns' Submission Agreement signed on: August 15, 1996.

Respondents Salerno, Schreiber, Farris, Johnson, Gregory and the Estate of James Mongno did not file executed Submission Agreements.

HEARING INFORMATION

Two pre-hearing conferences were conducted with the arbitration panel on March 18, 1997 and May 30, 1997. Two pre-hearing conferences were conducted with the Chairman on June 5, 1997 and June 16, 1997. In addition, nine hearing sessions were conducted on July 7, 8, 9 and 10, 1997 in Tampa, Florida.

CASE SUMMARY

Claimants alleged that while they maintained accounts at J. Gregory & Company, Inc., the individuals controlling Gregory engaged in unfair, deceptive and manipulative practices, resulting in misrepresentations to their retail clients, including but not limited to the Claimants herein. Claimants alleged that as "control" people of Gregory, Respondents Mongno and Borden foisted a duplicitous scheme which amounted to fraud upon the customers of Gregory by, among other actions, directing excessive mark-ups on individual trades, structuring commissions within the branch offices of Gregory so that incentives for "sells" of "house" products would be ten to fifteen times greater than "buys" of such products, and manipulating the warrant markets of particular securities through numerous misrepresentations to Gregory clients. Claimants alleged that none of this was disclosed to the Claimants who invariably received monthly statements showing no commission being charged at all on particular house trades.

Claimants contended that by participating in these types of frauds, Respondents Mongno and Borden are liable under the Federal and Florida State Securities Laws. Claimants further maintained that the Respondents have also violated many of the ethical rules and codes of conduct within the regulatory framework of the industry. More specifically, Claimants alleged Respondents Mongno and Borden violated Section 10 of the 1934 Exchange Act and Rule 10b-5.

the general anti-fraud provisions of the U.S. Securities Laws. Claimants next alleged that since Respondents Mongno and Borden were controlling individuals of Gregory, they are jointly and severally liable as such under Section 20 of the 1934 Exchange Act.

Respondents Dianne Borden and Vincent Mongno denied all allegations contained in the Statement of Claim and asserted the following affirmative defenses: the Statement of Claim failed to state a claim upon which relief may be granted; Claimants were sophisticated investors who at all times were fully aware of any risks associated with the purchases in question; none of the stocks at issue were unsuitable for Claimants; Claimants expressly ordered, approved, authorized and ratified the acts and transactions complained of; Claimants are precluded from recovery based on the principles of ratification, estoppel and waiver; any losses were the result of market conditions and not misfeasance or malfeasance on the part of Respondents Borden and Mongno; Claimants failed to mitigate their damages; and, Claimants failed to use requisite due diligence. Respondents Borden and Mongno next denied that there is any right to punitive damages or a private right of action under the NASD Rules of Fair Practice and further denied that they violated those rules in any way.

Respondent Bear Stearns denied that they were in any way responsible for or liable to Claimants for any of the losses sustained and further denied that they were responsible for any conduct of the individual Respondents who were at all times relevant hereto employees of Gregory. Respondent Bear Stearns maintained that as clearing agent for Gregory, they furnished certain back office ministerial services for the accounts of customers of Gregory which were introduced to Bear Stearns. Respondent Bear Stearns maintained that they had no direct contact with customers of Gregory including the Claimants nor did they at any time offer investment advice or make recommendations for the purchase or sale of securities to clients of introducing firms such as the Claimants.

RELIEF REQUESTED

Claimants requested compensatory damages of \$212,215.00, interest of \$74,275.25, punitive damages, costs, and a determination by the panel of an entitlement to reasonable attorneys' fees.

Respondents Vincent Mongno and Dianne Borden requested that all claims be dismissed in their entirety and that Respondents be awarded from Claimants their costs and disbursements associated with the proceeding together with such other relief that the Tribunal deemed just and proper.

Respondent Bear Stearns requested that all claims asserted against them be dismissed in their entirety and that the costs and expenses of the proceeding be assessed exclusively against the Claimants.

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(s) remain on file with NASD Regulation, Inc.

The panel determined that the issues of liability and damages were submitted to arbitration on all counts contained in Claimants' Statement of Claim.

Prior to the commencement of the evidentiary hearing in this matter, NASD Regulation, Inc. was informed that the Claimants were withdrawing, without prejudice, all claims against Lorette Farris, Warren Schreiber, Bear Stearns and Thomas Johnson. In addition, NASD Regulation, Inc. was informed that the Claimants were withdrawing all claims against Nicholas Salerno with prejudice.

J. Gregory & Company, Inc. filed a voluntary petition for relief pursuant to Chapter 7 of Title 11, United States Code on October 31, 1995. Accordingly, all claims asserted in this arbitration against this Respondent are stayed and the arbitration panel did not render any determinations with regard to claims asserted against Gregory.

On May 13, 1997 NASD Regulation, Inc. was informed that the Estate of James Mongno was declining to submit to the jurisdiction of the NASD.

Subsequent to the filing of this arbitration claim Lloyd Muller passed away.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

All claims by the Claimants against Respondents Borden and Mongno are hereby dismissed in all respects.

The Claimants' request for punitive damages is denied.

Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, forum fees in the sum of \$11,600.00 (two pre-hearing conferences-panel \$2000.00 plus two pre-hearing conferences-Chairman \$600.00 plus nine hearing sessions x \$1,000.00) are assessed as follows:

Claimants are assessed the sum of \$11,600.00 less the \$1,000.00 previously deposited in partial satisfaction thereof leaving a balance due of \$10,600.00.

Respondent Bear Stearns is assessed the sum of \$500.00 representing the member surcharge pursuant to Rule 10333 of the Code of Arbitration Procedure.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/S/

Langfred W. White, Esq.

Public

/S/

Patricia A. Gunn CPA

Public

/S/

Joseph Amonette

Industry

Date of Decision: July 25, 1997