

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Hugh T. Tomlinson

96-01876

Name of Respondents

Bear Stearns & Company
Doran Haynie

CASE SUMMARY

In a case filed with National Association of Securities Dealers Regulation, Inc. on May 2, 1996, claimant Hugh Tomlinson ("claimant"), who appeared Pro Se, alleged that respondents Bear Stearns & Co., Inc. ("Bear Stearns") and Doran Haynie ("Haynie") breached an agreement that they had between them. Claimant further alleged that on March 21, Haynie called to solicit him to purchase April 320 puts, at 4 3/8 - 1/2. Claimant also alleged that Haynie told him his commission would be 1/8 point and would watch the price on an hourly basis and take unilateral action to limit losses to about a point. Claimant asserted that he asked Haynie about the past performances on this type of activity, and Haynie gave him a list of trades from January to the present and also stated that loss trades were held to a point or so by his exiting the market when that level of loss was reached. Claimant further asserted that based on this performance record and Haynie assurance to watch the market, he purchased 10 S&P 100 April 320 options. Claimant also asserted that this position was closed by Haynie on March 23, 1990 with a 2 point gain.

Claimant contended that on March 28, 1990, he purchased 14 S&P 100 April 320 puts at 3 7/8. Claimant further contended that this trade was closed by Haynie at 2 7/16 on April 20, 7/16 outside his one point loss limit. Claimant also contended that he reminded Haynie that he would only accept a one point loss, and Haynie told him that he would reimburse him for the excess loss. Claimant alleged that based on this assurance, he agreed to the next trade Haynie recommended, which was 10 S&P calls May 320 at 3 1/4 on April 24, 1990. Claimant further alleged that this trade was closed by Haynie on April 26, at 2 5/8, or a loss of 5/8 point, well within the one point limit.

Claimant also alleged that his last trade was to buy 5 S&P 100 puts May 315 on May 2, 1990. Claimant asserted that on May 5, he received a statement from Bear Stearns indicating a transfer of funds to the Chemical Bank Reserve Fund ("Chemical"), which he took to be the excess loss funds Haynie had unreturned to his account. Claimant further asserted that sometime in May, Haynie left Bear Stearns and he never received a telephone call or correspondence from Bear Stearns about his account. Claimant also asserted that as a result the options were allowed to expire, with a loss of \$2,145, some \$1,645 more than it should have been. Claimant further contended that after closely reviewing his monthly statements, he discovered that the funds transferred to Chemical dealt with his own unused monies. Claimant also

asserted that he spoke with John Curran ("Curran") Compliance Officer at Bear Sterns, who stated that he should be responsible for some of the loss, thereby admitting that culpability of Bear Sterns to some extent.

Respondents Bear Sterns and Haynie (collectively referred to as "respondents") through their representative and in-house counsel Cara Aber maintained that claimant signed a Options Agreement form in which he attested to the fact that he had moderate investment experience with options and extensive stock/bond experience. Respondents further maintained that claimant's account was a non-discretionary account and Haynie was not able under any circumstance to unilaterally decided to buy or sell anything for claimant. Respondents also maintained that Haynie never made any agreement with claimant regarding his options exposure. Respondents contended that previous to the final May 1990 transaction, claimant had lost more than a point on an options transaction and continued to trade with Haynie. Respondents further contended that claimant continued to trade with Haynie even though he charged him another commission for his final trade, and there was never a \$600 credit to claimant's account. Respondents also contended that claimant received a Bear Sterns Option Risk Disclosure document and accepted those risks.

RELIEF REQUESTED

Claimant Hugh Tomlinson requested \$2,245.00 in damages.

Respondents Bear Sterns and Haynie requested that the claims of claimant be dismissed in their entirety with costs and fees for defending claim.

OTHER ISSUES CONSIDERED & DECIDED

The arbitrator review and considered respondents Bear Sterns and Haynie motion to dismiss under Rule 10304 of the Code of Arbitration Procedure, the motion was denied.

AWARD

Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Gregory Ceshker, was selected to review the matter in controversy between the parties set forth in Submissions to Arbitration signed by claimant Hugh Tomlinson on August 27, 1996 and by respondents Bear Sterns on October 14, 1996 and by Doran Haynie on October 8, 1996 as required by Rules 10301 and 10302 of the Code of Arbitration Procedure.


And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Bear Sterns and Doran Haynie be and hereby are jointly and severally liable and shall pay claimant the sum of \$1,645.24.
2. Respondents Bear Sterns and Doran Haynie be and hereby are jointly and severally liable and shall pay claimant an interest rate of 8% per annum from May 22, 1990 to date of payment.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by claimant shall be retained by NASD Regulation, Inc. Respondents Bear Sterns and Doran Haynie be and hereby are jointly and severally liable

and shall pay claimant the sum of \$50.00 as reimbursement of the filing fee.

AFFIRMATION

I, **Gregory Ceshker, Esq.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Gregory L. Ceshker, Esq.

Date of Decision: May 16, 1997