

NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimant

The O'Leary Family Revocable Trust

96-03265

Name of Respondents

Bear Stearns & Company
George Jackson Montgomery, II

REPRESENTATION

For claimant The O'Leary Family Revocable Trust, David Tachau, Trustee ("claimant") appeared R. Gregg Hovious, Esq., of the law offices Tachau, Maddox, & Hovious, PLC located in Louisville, Kentucky.

For respondents Bear Stearns & Company ("Bear Stearns") and George Jackson Montgomery, II ("Montgomery") (collectively "respondents") appeared William C. Mallery, Esq., Managing Director of the Legal Department of Bear Stearns

CASE INFORMATION

Statement of Claim was filed on: July 30, 1996.

Claimant's Submission Agreement was signed on: August 13, 1996.

A Joint Statement of Answer was filed by respondents on: October 3, 1996.

Bear Stearns' Submission Agreement was signed on: October 10, 1996.

Montgomery did not file a properly executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference:	August 15, 1997	-	One Session
	August 26, 1997	-	One Session
Hearing Dates/Sessions:	August 18, 1997	-	Two Sessions
	August 19, 1997	-	Two Sessions
	October 28, 1997	-	Two Sessions

The hearings on August 18 and 19, 1997, were conducted at the Seelbach Hotel located in Louisville, Kentucky. The hearing on October 28, 1997, was conducted at the Louisville Bar Association Bar Center located in Louisville, Kentucky.

CASE SUMMARY

Claimant alleged that, on or shortly before August 30, 1993, claimant opened a discretionary account with respondents and that Margaret P. Kneisel ("Kneisel") was the income beneficiary of the trust. Claimant contended that respondents had notice that the primary purpose of the trust was to provide income to Kneisel. Claimant contended that, from April 1994 until February 23, 1996, the trust's account lost money as a result of respondents' churning the account, purchasing and recommending unsuitable investments, and failing to exercise due care in the selection of such investments.

Respondents maintained that, in August, 1993, in his capacity as trustee, Michael O'Leary opened an account with Bear Stearns, utilizing Montgomery as the broker for the account. Respondents also maintained that, during the life of the account, Montgomery worked closely with the trustee to fulfill the objectives of the trust as interpreted and explained to him by Michael O'Leary. Respondents contended that the account in dispute was not discretionary and that all decisions were made and every transaction authorized solely by the trustee. In addition, respondents contended that the trust agreement permitted the trustee broad discretion in making investments without any requirement that the investment be income producing. Respondents further alleged that, in spite of Michael O'Leary's repeated efforts to ascertain from Kneisel her income needs, he received no response and, therefore, continued to pursue a growth oriented objective.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$67,139.00 and punitive damages in the amount of \$250,000.00. In addition, claimant requested costs, fees, attorneys' fees and, interest.

Respondent requested that the Statement of Claim be denied in its entirety and that the costs of this proceeding 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.

The panel made the following determinations concerning Montgomery, who did not file a Submission Agreement:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Montgomery was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Montgomery pursuant to Rule 10301 of the Code.
3. The panel found that Montgomery was required to file a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Montgomery pursuant to Rule 10314(a) of the Code.

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 request for compensatory damages is hereby denied.
2. Claimant's request for punitive damages is hereby denied.
3. Claimant's requests for attorneys' fees, costs, fees and interest are hereby denied.
4. All other requests are hereby denied.

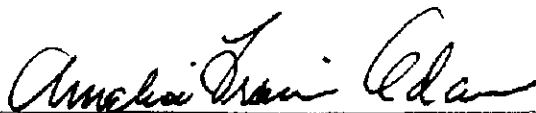
FORUM FEES

Pursuant to Rule 10332(g) of the Code, the arbitrators have determined that NASD Regulation will retain the \$200.00 non-refundable filing fee deposited by claimant and the \$350.00 member surcharge deposited by Bear Stearns, and have assessed the following forum fees:

2 Pre-hearing conferences x \$300.00	=	\$ 600.00
6 Hearing sessions x \$750.00	=	\$ 4,500.00
Total Forum Fees	=	\$ 5,100.00

Claimant be and hereby is liable for the sum of \$5,100.00 representing the total amount of forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation and, therefore, shall pay to NASD Regulation, Inc. the balance of \$4,350.00.

ARBITRATORS' SIGNATURES

A handwritten signature in cursive script, reading "Amelia F. Adams".

Amelia F. Adams, Esq.
Chairperson-Public Arbitrator

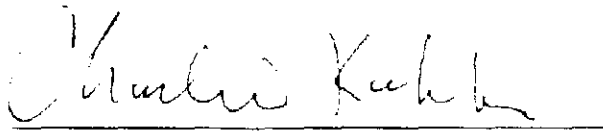
Charles W. Kohler, Esq.
Public Arbitrator

Gorman Jones Roberts
Industry Arbitrator

Date of Decision: January 21, 1998

ARBITRATORS' SIGNATURES

Amelia F. Adams, Esq.
Chairperson-Public Arbitrator



Charles W. Kohler, Esq.
Public Arbitrator


Gorman Jones Roberts
Industry Arbitrator

Date of Decision: January 21, 1998

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Amelia F. Adams, Esq.
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