

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Jerry Midgett,

Claimant,

v.

No. 96-03902

Bear Stearns & Co., Inc., and
Damion Carufe,

Respondents.

REPRESENTATION OF PARTIES

Claimant Jerry Midgett ("Claimant") was represented by Erwin Cohn, Esq. of Cohn & Cohn located in Chicago, Illinois.

Respondents Bear Stearns & Co., Inc. and Damion Carufe ("Respondents") were represented by Terry R. Weiss, Esq. and M. Graham Loomis, Esq. of Long Aldridge & Norman LLP located in Atlanta, Georgia.

CASE INFORMATION

The Statement of Claim was filed on or about September 4, 1996.

Claimant's Submission Agreement was signed on March 27, 1996.

The Statement of Answer was filed on or about March 3, 1997.

Respondent Bear Stearns' Submission Agreement was signed on March 3, 1997.

Respondent Carufe's Submission Agreement was signed on March 4, 1997.

The Amended Statement of Claim was filed on or about August 6, 1998.

The Statement of Answer to the Amended Statement of Claim was filed on or about September 3, 1998.

HEARING INFORMATION

The telephonic pre-hearing discovery conference with the chairman was held on February 17, 1999 for one (1) session. The telephonic pre-hearings with the full panel were held on July 27, 1998 for one (1) session and January 28, 1999 for one (1) session.

The hearing on the merits was held on February 24, 1999 for two (2) sessions and February 25, 1999 for two (2) sessions in Southfield, Michigan.

CASE SUMMARY

This claim arose out of Claimant's securities account maintained at Bear Stearns. Respondent Carufe was the account executive assigned to Claimant's account.

Claimant alleged that he was an unsophisticated investor with limited training and experience concerning investments who relied on Respondents to manage his account. In the Statement of Claim and Amended Statement of Claim, Claimant made various claims against Respondents, including: excessive trading as evidenced by high turnover in the account; the selling of inappropriate and unsuitable investments on margin; unauthorized trading without Claimant's prior consent or approval; misrepresentation and omission of material facts concerning the inherent risks of transactions in Claimant's account; breach of fiduciary duties; and negligent supervision by Bear Stearns.

Respondents denied all claims set forth in the Statement of Claim and Amended Statement of Claim. Respondents alleged that Claimant was at all times aware of and specifically pre-approved all trading activity in his account, and that the fundamentals of each security and the risks involved in every proposed transaction were discussed in detail with Claimant prior to the execution of any transaction. Respondents further alleged that every transaction in Claimant's account was consistent with Claimant's stated investment objectives. Respondent Bear Stearns contended that it adequately supervised Respondent Carufe.

Respondents also alleged that any of Claimant's claims predicated on transactions that occurred more than six years prior to filing the Statement of Claim were ineligible for arbitration pursuant to Rule 10304 of the NASD Code of Arbitration Procedure ("Code"). Respondents further contended that the claims were barred, in whole or part, by the applicable statutes of limitation.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimant requested an award of the following: compensatory damages in the approximate amount of \$203,061.55; punitive damages in the amount of \$609,184.65 (three times compensatory damages); interest in the amount of \$97,469.54; costs and expenses in the amount of \$5,500; as well as attorney fees; constituting a total request for damages in the amount of \$915,215.74; plus such other relief as the panel deems just and appropriate.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, and requested that the panel order the NASD to expunge any and all reference to this matter on Damion Carufe's CRD record, plus an award of their attorney fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

After considering Respondents' Motion to Dismiss pursuant to Rule 10304 of the Code, as well as Claimant's Response thereto, and after considering the oral arguments of the parties at the telephonic hearings, the panel decided that it would not hear any evidence relating to events or occurrences that took place in Claimant's account prior to March 28, 1990, and that to the extent Claimant's claims are based on transactions that took place prior to March 28, 1990, those claims were dismissed in their entirety.

During the course of the hearing, Claimant acknowledged that a number of the claims asserted against Respondents were untrue.

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. Office of Dispute Resolution.

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) That all Claimant's claims are dismissed in their entirety with prejudice;
- (2) That this matter is ordered expunged from the Central Registration Depository of the National Association of Securities Dealers for the record of Damion Carufe;
- (3) That other than forum fees which are specified below, the parties shall each bear their own costs, attorney fees and expenses incurred in this matter; and
- (4) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were six (6) hearing sessions x \$1,000 = \$6,000 in forum fees. There was one (1) pre-hearing conference x \$300 = \$300 in forum fees. Total forum fees = \$6,300. Pursuant to Rule 10332 (b) of 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 Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$250 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited by the Claimant.

Pursuant to Rule 10332(c) of the Code, Claimant is liable for and shall pay all forum fees in the amount of \$2,400 (1/2 forum fees - hearing session deposit).

Pursuant to Rule 10332(c) of the Code, Respondents are jointly liable for and shall pay all forum fees in the amount of \$3,150 (1/2 forum fees).

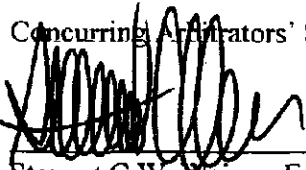
OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent Bear Stearns is liable for and shall pay to NASD Regulation, Inc. the \$500 member surcharge previously invoiced.

Pursuant to Rule 10319 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain Claimant's postponement deposit in the amount of \$750.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures:



Stewart C.W. Weiner, Esq.
Chairperson
Public Arbitrator

3/17/99
Dated:

Barabara A. Johannessen, Esq.
Panelist
Public Arbitrator

Dated:

Conrad W. Koski
Panelist
Industry Arbitrator

Dated:

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Date award served on parties: _____

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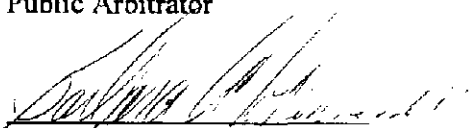
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17 MARCH 1999

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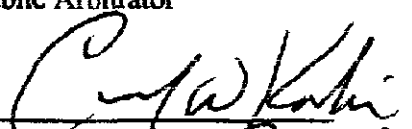
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Dated:



Conrad W. Koski
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Industry Arbitrator



Dated: 3/15/99

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Date award served on parties: _____