

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

John A. Cassidy, and
Roberta C. Cassidy

and

96-04226

Name of Respondents

Glenn Gryka,
Myrna Reilly,
Dale Heath,
Donna Bartlett,
First allied Securities,
First Affiliated Securities and
Bear Stearns & Co., Inc.

REPRESENTATION OF PARTIES

John A. Cassidy, and Roberta C. Cassidy ("Cassidy") were represented by initially by John C. Cassidy of Tempe, Arizona. Claimants were also represented by Michael Salcido, Esq., Phoenix, Arizona. At the time of hearing, Claimants were represented by John C. Cassidy.

Glenn Gryka ("Gryka"), Myrna Reilly ("Reilly"), and Dale Heath ("Heath") were represented by Robert D. Mitchell, Esq., Phoenix, Arizona.

First Affiliated Securities ("Affiliated") was represented by Jonathan ES Beckhor, , California.

First Allied Securities ("Allied") and Donna Bartlett ("Bartlett") were represented by Robert Murphy, Esq., and Brian Neville, Esq. of Josephthal & Co., Inc., New York, New York.

Rear Stearns & Co., Inc. ("Bear Stearns") was represented by William C. Mallery, Esq., of Bear Stearns, New York, New York.

CASE INFORMATION

Claimants filed the Statement of Claim on or about September 23, 1996. Claimants signed a Submission Agreement on September 18, 1996. Claimants also filed a Complete New Copy of the Statement of Claim. Claimants filed an Amended statement of Claim on or about July 4, 1997. Claimants filed a Reply to and Motion to Dismiss Counterclaims filed by Gryka, Heath, and Reilly on or about December 26, 1996.

Allied and Bartlett filed a joint Answer on or about November 6, 1996. Allied and Bartlett signed Submission Agreements on or about November 6, 1996.

Bear Stearns filed an Answer on or about November 13, 1996. Bear Stearns sign its Submission Agreement on or about November 15, 1996.

Gryka, Reilly, and Heath filed a Separate Answer and Counterclaim on or about November 15, 1996. Gryka, Reilly, and Heath signed Submission Agreements on November 14, 1996. Gryka filed a separate Answer to Cassidy's Amended Statement of Claim on or about August 15, 1997.

Affiliated filed an Answer on or about December 5, 1996. NASD Regulation, Inc. does not have a record of Affiliated's Submission Agreement on file.

HEARING INFORMATION

Pre-hearing conferences with the panel were held on June 13, 1997 for one (1) session, August 13, 1997 for one (1) session, and November 21, 1997 for one (1) session. There were a total of three (3) telephonic pre-hearing conferences with the entire panel.

The Arbitration Panel held a hearing on December 16, 1998 for two (2) sessions and December 17, 1998 for two (2) sessions in Phoenix, Arizona for a total of four (4) hearing sessions.

CASE SUMMARY

Cassidy alleged that Respondents: Committed securities fraud, in violation of ARS Section 44-1991; committed fraud; made unsuitable investment recommendations; committed dishonest and unethical conduct as defined in the Arizona Securities Act, AAC R14-4-130; breached their fiduciary duty; committed negligent supervision and/or failed to supervise; made negligent misrepresentations; and were negligent. Cassidy alleges that he continues to suffer emotionally, physically and mentally to this day. The allegations arose out of a "short against the box" of his position (13,200 shares) of ATMEL Corporation and the alleged fraudulent statements made by Respondents.

In his separate Answer to the Statement of Claim, Gryka denied the allegations made by Cassidy. Gryka asserted that: No legitimate claim for breach of fiduciary duty exists; there is not basis for a securities fraud claim; Cassidy's claims are barred by the applicable statutes of limitations and the doctrine of laches; Cassidy failed to mitigate his damages; Cassidy is not entitled to punitive damages; and Cassidy is not entitled to damages for emotional distress; and Cassidy's other claims fail both factually and legally to state a claim for which relief may be granted. Gryka, Heath, and Reilly also asserted a Counterclaim against Cassidy alleging defamation due to the alleged harm caused to their professional reputations by Cassidy's blatantly untrue and malicious statements.

In the response to the Counterclaim, Cassidy denied each and every allegation contained therein. Cassidy asserted that all statements contained in the Statement of Claim, even those that are otherwise defamatory, are privileged if they are connected with, or have any bearing on, or are related to the subject of inquiry.

In its Answer, Allied denied Cassidy's allegations. Allied further asserted that it is not the successor of Affiliated and is not liable for the debts, if any, of said organization. Bartlett alleged that she forwarded Cassidy's complaint letter to Mr. Bekhor a few days after receipt of same.

Affiliated submitted corrections to Allied's Answer to the Statement of Claim. Affiliated asserted that: On or about July 27, 1994 Allied and Affiliated entered into a legally binding stock purchase agreement whereby Allied was to acquire stock of Affiliated; the stock purchase agreement provided the group the ability to convert the stock purchase into an asset purchase; all parties entered into an agreement whereby the group agreed to purchase the assets and liabilities of Affiliated; and that Allies is the successor of Affiliated.

Bear Stearns denied Cassidy's allegations. Bear Stearns asserted that, as a clearing broker, it cannot be held liable for the actions of Allied, Affiliated and their agents. Bear Stearns further asserted that it had sent Cassidy a Rule 382 notice that Affiliated and Allied would be solely responsible for the hiring, training and supervising of their account executives and for supervising all account activity.

RELIEF REQUESTED

In the Amended statement of Claim, Claimant requested an award of the following: Damages representing the difference between what his account would be worth today, had the ATMEL positions not been wrongfully sold out, and its actual value; the difference between the cost of selling the shares at \$22.125 pre share and reacquiring them; "Opportunity" or "Benefit of the Bargain" losses based on how the account would have performed had it been properly managed; disgorgement of the margin interest that accrued on the short against the box position, which Respondents had assured Mr. Cassidy would not accrue; pre and post judgment interest until the award is paid in full; other consequential damages; costs and attorneys' fees incurred herein, including all NASD filing and expert witness fees, pursuant to ARS Sections 12-341.01 and 44-2001; punitive damages in an amount to be determined at the hearing of this matter; and such other and further relief as is deemed just and proper. Cassidy originally had requested damages of \$711,494.16, and punitive damages of \$2,134,482.40. Cassidy also moved for an order dismissing the defamation claim.

Reilly, Gryka, and Heath requested that the panel enter an award in their favor for damages of at least \$50,000, plus attorneys' fees and costs. Gryka further requested that the panel dismiss the Statement of Claim.

Bartlett and Allied denied any wrongdoing alleged in the Statement of Claim, and requested dismissal of the claims made against them.

Affiliated requested that it be dismissed from this matter.

Bear Stearns requested that Cassidy's claims be dismissed and the costs of this proceeding be assessed against Cassidy.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Affiliated has been properly served with the Statement of Claim pursuant to Rules 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Affiliated had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondent did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Motions to Dismiss were made by Reilly, Heath, Gryka, Bear Stearns, and Bartlett. After considering the pleadings, motions and responses, and considering argument made by counsel during three pre-hearing conferences, the arbitrators granted the motions with respect to Reilly, Bartlett, Heath, and Bear Stearns. The arbitrators further ordered that the CRD records of Reilly, Heath, and Bartlett be expunged. Gryka also filed requests that the Director of arbitration deny the use of the forum to Cassidy. The request were denied.

On December 17, 1998, Gryka's counsel made an oral Motion to Dismiss Cassidy's claims with prejudice. The activity that lead up to the motion, and the ensuing argument by the parties can be found on the record of the hearing. After considering the parties' positions relative to Gryka's Motion to Dismiss, the arbitrators met in executive session for deliberation. After deliberation, the arbitrators, on the record, granted Gryka's motion pursuant to Rule 10305 of the Code. Gryka had also requested an Order be entered expunging his CRD record.

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:

Claimants John A. Cassidy's and Roberta C. Cassidy's claims are, and each of them, dismissed with prejudice and referred to applicable remedies at law pursuant to Rule 10305 of the Code.

NASD Regulation, Inc. is hereby directed to expunge any and all references of the claims of John A. Cassidy and Roberta C. Cassidy from the permanent CRD records of the following individuals: Glenn Gryka CRD#1832038; Myrna Reilly CRD#1684372; Dale Heath CRD#1743748; and Donna Bartlett CRD#1813672.

All other requests for relief/claims filed which are not specifically set forth in this award are, and each of them, denied with prejudice.

OTHER COSTS

Each party shall bear its own costs and attorneys' fees associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each prehearing conference with a single arbitrator and \$600 for a pre-hearing conference with the entire panel. There were three (3) pre-hearing sessions with the full panel @ \$600 per session, and four (4) hearing sessions @\$600 per session = \$4,200 in forum fees. 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 of Arbitration Procedure, NASD Regulation, Inc. 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 \$1,000 previously deposited with NASD Regulation, Inc. by Cassidy. The postponement deposit of \$750 previously paid shall be refunded to Cassidy.

Pursuant to Rule 10332(c) of the Code, NASD Regulation, Inc. shall retain the non-refundable Counterclaim filing fee in the amount of \$500 previously paid by Gryka, Heath, and Reilly. Additional forum fees in the amount of \$600 are assessed against Gryka, Heath, and Reilly by the arbitrators.

Additional forum fees in the amount of \$1,300 are assessed by the arbitrators against Affiliated.

Additional forum fees in the amount of \$1,300 are assessed by the arbitrators against Allied. The forum fees assessed shall be deducted from the \$1,200 on deposit with NASD Regulation, Inc.

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OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent Allied has paid to NASD Regulation, Inc. the \$500.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent Affiliated shall pay to NASD Regulation, Inc. the \$500.00 past due member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent Bear Stearns shall pay to NASD Regulation, Inc. the \$500.00 past due member surcharge previously invoiced.

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

Dated:

Glenn C. Johnson
Public Arbitrator, Presiding Chair

Henry L. Dahl
Public Arbitrator



Ralph H. Martin, III
Industry Arbitrator

1/11/99

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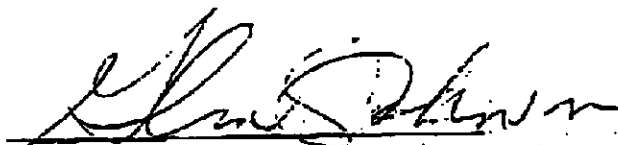
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Dated:


Glenn C. Johnson
Public Arbitrator, Presiding Chair

1-13-99

Henry L. Dahl
Public Arbitrator

Ralph H. Martin, III
Industry Arbitrator

01/12/99

01/12/99

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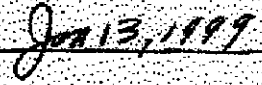
Dated:

Glenn C. Johnson
Public Arbitrator, Presiding Chair



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Jan 13, 1999