

In the Matter of the Arbitration Between

Name of Claimant

William H. Stern

96-04948

Name of Respondents

Bear Stearns & Co., Inc.

Austin Moscowitz

*Stuart, Coleman & Co., Inc.

REPRESENTATION

For Claimant William H. Stern ("Claimant") appeared Rand J. Levin, Esq. of the law firm of Robinson Silverman Pearce, etal. located in New York, NY.

For Respondent Austin Moscowitz ("Moscowitz") appeared Kristin Angelino, of Stuart, Coleman & Co., Inc.

For Respondent Stuart Coleman & Co., Inc. ("Stuart Coleman") appeared Stuart J. Voisin, Chairman of the Board and President.

For Third-Party Respondent Bear Stearns & Company ("Bear Stearns") appeared William C. Mallery, Esq., in-house counsel.

CASE INFORMATION

Statement of Claim was filed on: November 6, 1996.

Claimant's Submission Agreement was signed on: November 6, 1996.

A Joint Statement of Answer and Cross-Claim was filed by Respondents Stuart Coleman & Co., Inc. Austin Moscowitz on: January 2, 1997.

Respondent Stuart Coleman & Co., Inc.'s Submission Agreement was filed on: January 2, 1997.

Respondent Austin Moscowitz did not submit an executed Submission Agreement.

Statement of Answer was filed by Third Party Respondent Bear Stearns & Company on: February 6, 1997.

Respondent Bear Stearns & Company did not submit an executed Submission Agreement.

9710-00

HEARING INFORMATION

Pre-Hearing conference:	May 19, 1997	-	One Session
Hearing Dates/Sessions:	May 21, 1997	-	Two Sessions
	May 22, 1997	-	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that Respondents' failed to respond to his communications in or about March 1996 and failed to execute a sell order placed by Claimant to sell 10,000 shares of common stock of HEARx Ltd. ("HEARx"). Claimant further alleged that respondents failed to properly maintain books and stock records and to record Claimant's ownership of 10,000 shares of common stock of HEARx. Claimant maintained that Respondents failed to send to Claimant certain redeemable warrants which Claimant was entitled to receive as a part of his purchase of the shares. Claimant further maintained that respondents' never informed of an offer to convert the Warrants into shares of common stock at a reduced conversion price. Claimant maintained that this deprived him of his right to purchase additional shares of HEARx stock.

Respondents Stuart Coleman and Moscovitz maintained that Claimant never placed an oral order to sell and that the only written order was in a letter from Claimant to Moscovitz dated October 25, 1996, upon which Stuart Coleman immediately acted. Stuart Coleman and Moscovitz further maintained that the responsibility of recording the ownership of the shares in question was that of their clearing agent, Bear Stearns. Stuart Coleman and Moscovitz contended that the maintenance of books and records was also the responsibility of the clearing agent. They maintained that they performed what they were required to do. Stuart Coleman and Moscovitz asserted a Third-Party Claim against Bear Stearns for indemnification.

Third-Party Respondent Bear Stearns maintained that they had no supervisory responsibility for the sales practices of Moscovitz and cannot be held liable for his failure to advise his client. Bear Stearns further maintained that, while they may have been responsible for not recording the HEARx units in an account in Claimant's name, this was merely a clerical error which was not the cause of Claimant's damage. Bear Stearns alleged that whatever damage Claimant may have suffered was the direct result of his own failure to take action and his brokers' failure to provide adequate advice.

RELIEF REQUESTED

Claimant requested \$100,000 plus interest, such other compensatory damages as may be proved at hearing, punitive damages and a reasonable attorney's fee.

Respondents requested indemnification from Third-Party Respondent for the full amount of any award.

Third-party Respondent requested that the Third-Party Claim be dismissed and the costs of the proceeding be assessed against Claimant and/or Respondents.

OTHER ISSUES CONSIDERED AND 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.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearings, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants claims against Respondents' Stuart Coleman & Co., Inc. and Austin Moscowitz are hereby dismissed in their entirety.
2. Respondents Stuart Coleman and Moscowitz's Third-Party Claim is hereby denied.
3. Claimants requests for punitive damages are hereby denied.
4. Claimants requests for attorney's fees are hereby denied.

FORUM FEES

Pursuant to Rule 10332 of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$200.00 non-refundable filing fee deposited by claimant and a \$500.00 non-refundable filing fee deposited by Respondent Stuart Coleman & Co., Inc. and have assessed the following forum fees:

1 Pre-Hearing conference x \$300.00	=	\$ 300.00
4 Hearing Sessions x \$750.00	=	\$3,000.00
Total	=	\$3,300.00

1. Claimant be and hereby is liable for the sum of \$825.00, representing twenty-five percent of the total forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation and, therefore, claimant shall pay the balance of \$75.00.
2. Respondents Stuart Coleman & Co., Inc. and Austin Moscowitz be and hereby are jointly and severally liable for the sum of \$1,650.00, representing fifty percent of the total forum fees assessed. Respondents Stuart Coleman and Moscowitz previously deposited \$600.00 with NASD Regulation and, therefore, shall pay the balance of \$1,050.00. In addition, Stuart Coleman be and hereby is liable and shall pay the sum of \$350.00 for the Member Surcharge. Stuart Coleman has submitted the sum of \$350.00 and, therefore, does not owe the Member Surcharge.
3. Third-Party Respondent Bear Stearns and Company be and hereby is liable for the sum of \$825.00, representing twenty-five percent of the total forum fees assessed. In addition, Bear Stearns be and hereby is liable and shall pay the sum of \$350.00 for the Member Surcharge. Bear Stearns has not submitted the sum of \$350.00 and, therefore, owes the Member Surcharge.

All fees are payable to NASD Regulation, Inc.

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ARBITRATORS' SIGNATURES

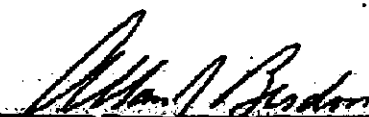


Allan J. Berdon, Esq.
Public Arbitrator - Chairperson

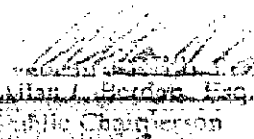
Neil J. Carey
Public Arbitrator

Charles L. Henderson, Esq.
Industry Arbitrator

I, Allan J. Berdon, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Allan J. Berdon, Esq.
Public Chairperson



Allan J. Berdon, Esq.
Public Chairperson

I, Neil J. Carey, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Neil J. Carey
Public Panelist

I, Charles L. Henderson, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.


Charles L. Henderson, Esq.
Industry Panelist

Date of Decision : July 22, 1997

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ARBITRATORS' SIGNATURES

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Public Arbitrator - Chairperson




Neil J. Carey
Public Arbitrator

Charles L. Henderson, Esq.
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Public Panelist

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Industry Panelist

Date of Decision : July 22, 1997

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Public Arbitrator - Chairperson

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Public Arbitrator



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Industry Arbitrator

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Charles L. Henderson, Esq.
Industry Panelist

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