

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Jack and Esther Mihelich,

Claimants,

v.

No. 96-05345

Bear Stearns & Co., Inc., and Fulton Greg Cook,

Respondents.

REPRESENTATION OF PARTIES

Claimants Jack and Esther Mihelich ("Claimants") were represented by Walter L. Baumgardner, Esq. of Musilli, Baumgardner, Wagner & Parnell located in St. Clair Shores, Michigan.

Respondents Bear Stearns & Co., Inc., and Fulton Greg Cook ("Respondents") were represented by Phillip C. Korovesis, Esq. of Butzel Long located in Detroit, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about November 25, 1996.

Claimants' Submission Agreement was signed on November 26, 1996.

The Joint Statement of Answer was filed on or about February 24, 1997.

The Submission Agreement of Respondent Bear Stearns & Co., Inc. was signed on February 20, 1997.

The Submission Agreement of Respondent Fulton Greg Cook was signed on February 21, 1997.

Respondents' Post-Hearing Memorandum was filed on or about June 30, 1998.

Claimants' Post-Hearing Memorandum was filed on or about July 6, 1998.

HEARING INFORMATION

The hearing was held on June 23, 1998 for two (2) sessions in Southfield, Michigan.

CASE SUMMARY

Claimants alleged that Respondents sold them highly speculative and risky investments which were unsuitable based on their conservative investment objectives. Claimants asserted that Respondents engaged in fraud and misrepresentation involving their failure to disclose the risks associated with the investments at issue: 700 shares of Tower Semiconductor at a price of 23 5/8 and 1,000 shares Access HealthNet at a price of 11 1/4.

Respondents denied that they were responsible for Claimants' losses. Respondents asserted that, when Claimants opened the account, Mr. Mihelich indicated that he had an annual income of \$100,000 and approximate net worth of \$1,700,000. Respondents contended that the investments at issue were suitable investments which were consistent with Claimants' expressed investment objectives (growth/capital gains), risk tolerance, as well as their prior investment history (including trading smaller capital stocks on the NASDAQ exchange). Respondents also asserted that Claimants' claims involving the Access investment were ineligible for arbitration under Rule 10301(d) of the NASD Code of Arbitration Procedure ("Code").

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: damages in the amount of \$46,496.56, plus attorney fees, filing fees, and other expenses.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of attorney fees and costs.

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 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 the Statement of Claim is hereby dismissed in its entirety with prejudice;
- (2) 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
- (3) 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 \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$400 = \$800 in forum fees. Pursuant to §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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$120 and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited by the Claimants (1/2 forum fees).

Pursuant to §10332(c) of the Code, Respondents are liable for and shall pay forum fees in the amount of \$400 (1/2 forum fees).

Pursuant to §10319 of the Code, Respondents are liable for and shall pay postponement fees in the amount of \$400.

Pursuant to Rule 10333 of the Code, Respondent Bear Stearns & Co., Inc. shall pay to NASD Regulation, Inc. the \$200 past due member surcharge fee previously invoiced.

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

Concurring Arbitrators' Signatures:

\s\ Marvin I. Horowitz, Esq.

Marvin I. Horowitz, Esq.
Chairperson
Public Arbitrator

August 12, 1998

Dated:

\s\ Leonard R. Present

Leonard R. Present
Panelist
Public Arbitrator

August 8, 1998

Dated:

\s\ Michael J. Piku

Michael J. Piku
Panelist
Industry Arbitrator

August 8, 1998

Dated:

For NASD Regulation use only:

Date award served on parties:

August 14, 1998