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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Jeffrey Kraft,

Claimant,

and

No. 96-05513

Bear Stearns & Co. Inc. and Craig
Klinger,

Respondents.

REPRESENTATION OF PARTIES

Claimant Jeffrey Kraft, ("Kraft") was represented by Jonathan W. Evans, Esq. of Jonathan W. Evans & Associates, located in Los Angeles, Ca.

Respondents Bear Stearns & Co. Inc., ("Bear Stearns") and Craig Klinger, ("Klinger") were represented by Stephen T. Johnson, Esq. and Cheryl Jerome Moore, Esq. of Arter & Hadden located in Dallas, Texas.

CASE INFORMATION

Claimant Kraft's Statement of Claim was filed on or about December 24, 1996.
Claimant Kraft's Submission Agreement was signed on December 6, 1996.

Respondents Bear Stearns and Klinger's Joint Statement of Answer was filed on or about February 28, 1997.

Respondent Bear Stearns' Submission Agreement was signed on January 21, 1997 by Mark E. Lehman, its Senior Managing Director

Respondent Klinger's Submission Agreement was signed on January 28, 1997.

HEARING INFORMATION

A pre-hearing conference was held on July 1, 1997 for one (1) session.

The hearing was held on October 7, 1997 for two (2) sessions and October 8, 1997 for two sessions for a total of four (4) sessions.

The hearing was held in Dallas, TX.

CASE SUMMARY

Claimant Kraft brought this action against Respondent Bear Stearns and Respondent Klinger alleging causes of action including negligence, suitability, misrepresentation, failure to supervise, unauthorized trading, breach of fiduciary duties, violation of federal securities laws and violation of NASD rules.

Specifically, Claimant Kraft alleged that as a result of the Respondents' disregard of his lack of knowledge in general investment principles and his low level of risk tolerance he lost money and was damaged. Kraft also alleged that Bear Stearns negligently failed to monitor and supervise its broker Klinger who executed unauthorized trades. It was further alleged that Klinger violated the trust that Kraft bestowed in him and concealed and misrepresented material facts concerning the Claimant's investments. In addition, Kraft asserted that Bear Stearns is liable for its own breach of fiduciary and other duties.

Claimant Kraft asserted that Klinger never told him about charges commissions and fees that he would be required to pay. He was not given accurate information about the securities purchased in his account including: Broadband Technologies; CUC International; Charming Shoppes, Inc.; Grupo Sidek; Maxxim Medical, Inc.; Coastcast Corp.; and Methanex Corp. These companies recommended to Kraft by Klinger were securities on which Bear Stearns had given favorable remarks. Claimant was allegedly not given information regarding the market maker status of Bear Stearns or the underlying factual and financial relationship between Bear Stearns and the stocks the Respondents represented. Furthermore, it was alleged that Kraft was never told about the danger and risks inherent in investing in speculative issues, lack of diversification in his portfolio, and by trading stocks on margin.

Respondents Bear Stearns and Klinger denied the allegations set forth in Statement of Claim as they relate to any wrongdoing on their part. Specifically, Respondents asserted that Kraft's claims are merit less, and Kraft is a knowledgeable, experienced, and well informed investor who had previously had an account at Merrill Lynch. Respondents' further stated that all of the transactions in Kraft's account were authorized and suitable for him based in his stated financial condition and investment objectives.

In addition, Respondents asserted that Bear Stearns did not fail to supervise Klinger, and that all of

the trading activity in Kraft's account was fully authorized by him and appropriate for him given his financial condition and investment objectives. Respondents maintained that Kraft received monthly account statements reflecting all trading activity in his account. His monthly account statements were accurate and clearly reflected all pertinent information concerning his account. Respondents further stated that notwithstanding receipt of the confirmations and monthly account statements, Kraft never, prior to the filing of this arbitration, asserted that any of the trades in his account were unauthorized. Rather, the Respondents' contended that Kraft was a sophisticated investor who was mature enough to make the decision to invest his money in the market and to accept the results.

Respondents' also set forth the following affirmative defenses: Claimant Kraft fails to state a claim upon which relief can be granted; statute of limitations; by failing to object to the handling of his accounts, he has waived the right to make this claim; Kraft expressly and by his conduct ratified the transactions complained of; all risks concerning the purchase and sales of securities were known fully to Kraft; and that all recommendations made by Respondents' to Kraft were made in good faith and based upon a sound factual basis.

RELIEF REQUESTED

Claimant Kraft requested an award for: compensatory damages of \$92,108.86; disgorgement of commissions, margin interest; reasonable rate of return on investments the arbitrators deem would have been suitable for Kraft; interest at the legal rate of 10% from October 1994; punitive damages in an amount to justify and equitably punish both Respondents; cost of arbitration including expert witness fees, filing fees, and hearing costs and reasonable attorneys fees.

Respondents requested that the claims asserted against them be dismissed in their entirety; that they be awarded their costs and attorneys' fees; and that the costs of this proceeding be assessed against Claimant Kraft.

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 Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleading, 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 Bear Stearns & Co. Inc. is liable for and shall pay Jeffrey Kraft compensatory damages in the amount of \$27,650.98;
2. That Craig Klinger is liable for and shall pay Jeffrey Kraft compensatory damages in the amount of \$3,222.10;
3. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300 and there were four (4) hearing sessions x \$500 = \$2,300 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (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, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$150 and shall retain as forum fees the hearing session deposit of \$500 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Jeffrey Kraft.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge of \$300 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Bear Stearns & Co. Inc.

The remaining forum fees shall be split between the parties as follows. Claimant Jeffrey Kraft is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution \$350 (one half total forum fees of \$2,300 less \$500 hearing session deposit less the \$300 overpayment.) Respondents Bear Stearns & Co. Inc. and Craig Klinger are jointly and severally liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution \$1150 (one half total forum fees of \$2,300.)

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

Concurring Arbitrators' Signatures

/s/ Anthony W. Kashouty

November 17, 1997

Anthony W. Kashouty
Panelist
Public Arbitrator

Dated:

/s/ Charles F. Guittard

November 18, 1997

Charles F. Guittard
Chairperson
Public Arbitrator

Dated:

/s/ Jack L. Ladd

November 14, 1997

Jack L. Ladd, Esq.
Panelist
Industry Arbitrator

Dated: