

NASD Regulation, Inc., Award

In the Matter of Arbitration Between

**James Danner, William O.G. Danner,
Barbara Drake, William Oxford G. Danner
Irrevocable Trust, Jimmie G. Danner, Trustee,
Daniel M. Drake Trust, Jimmie
and William Danner, Trustees,
Estate of Acton G. Danner, James Danner, Executor,
William Getty Stannley Irrevocable Trust,
Jimmie and William Danner, Trustees,
Estate of Oxford G. Danner, James Danner,
Executor, and Barbara and Maurice Drake,
Claimants,**

and

No. 97-00110

**Bear Stearns & Company, Inc., and
Bear Stearns Securities Corporation,
Jack M. Pausman,
Respondents.**

REPRESENTATION OF PARTIES

Claimants, James Danner, William O.G. Danner, Barbara Drake, William Oxford G. Danner Irrevocable Trust, Jimmie G. Danner, Trustee, Daniel M. Drake Trust, Jimmie and William Danner, Trustees, Estate of Acton G. Danner, James Danner, Executor, William Getty Stannley Irrevocable Trust, Jimmie and William Danner, Trustees, Estate of Oxford G. Danner, James Danner, Executor, and Barbara and Maurice Drake, (together, "Claimants") were represented by William S. Shepherd, Esquire of William S. Shepherd & Associates, P.C., located in Houston, Texas.

Respondents, Bear, Stearns & Company, Incorporated and Bear Stearns Securities Corporation (together, "Bear Stearns") and Jack M. Pausman ("Respondent Pausman") was represented by Cheryl Jerome Moore, Esquire of Arter & Hadden, located in Dallas, Texas.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about June 26, 1997. Claimants Submission Agreement for the William Getty Stannley Irrevocable Trust, the William G. Danner Family Investment Trust and the Daniel M. Drake Irrevocable Trust was signed by Trustee, May 9, 1997 by William Oxford Danner, Jr., Trustee. Claimant, Maurice Drake's Submission Agreement was signed on May 16, 1997. The NASD Regulation, Inc., has no other Submission Agreements on file for the Claimants.

Respondents, Bear Stearns's Statement of Answer was filed on or about August 19, 1997. Respondents' Submission Agreement was signed on August 12, 1997 by Mark E. Lehman, Senior Managing Director of Bear Stearns Securities Corporation and Bear, Stearns & Company, Incorporated. Respondent Jack M. Pausman's Answer was filed on or about October 16, 1997. Respondent's Submission Agreement was signed on September 25, 1997.

HEARING INFORMATION

There was a pre-hearing held on July 22, 1998 at 2:00 p.m., and the hearing was held on July 27 and 28, 1998, at 9:00 a.m., for two (2) sessions each day, and on July 29, 30 and 31, 1998 for three (3) sessions each day in Dallas, Texas.

CASE SUMMARY

James Danner, William O.G. Danner, Barbara Drake, William Oxford G. Danner Irrevocable Trust, Jimmie G. Danner, Trustee, Daniel M. Drake Trust, Jimmie and William Danner, Trustees, Estate of Acton G. Danner, James Danner, Executor, William Getty Stannley Irrevocable Trust, Jimmie and William Danner, Trustees, Estate of Oxford G. Danner, James Danner, Executor, and Barbara and Maurice Drake ("Claimants,") asserted that as brothers and a sister with little experience with investments, James Danner, William Danner, Jr., and Barbara Drake relied to their detriment on the advice of Mr. Jack Pausman ("Pausman") an agent of Bear Stearns. Claimant said that they lost nearly \$100,000.00 of the \$600,000.00 inheritance from their father, which was originally in one single account at Bear Stearns, but then split up into several accounts for the siblings. As alleged, Pausman aggressively sought the business of Claimants, and convinced them to begin purchasing and selling securities in their accounts which were unsuitable for their conservative investment goals, and constituted churning of their accounts. Claimants contended that while the funds were on deposit with Bear Stearns, that firm's agents entered into hundreds of transactions for them, causing them to lose money while the Bear Stearns' agents earned tens of thousands of dollars in commissions. In one instance, Claimants said that a purchase was made after Pausman was specifically told not to buy the shares. Claimants asserted that Respondents' actions constituted: breach of contract and warranties, promissory estoppel;

violations of the Texas Deceptive Trade Practices Act; violations of the Federal Securities Exchange Act; violations of the Texas Securities Act and the Texas Business and Commerce Code; and misrepresentation, unjust enrichment, breach of fiduciary duty, negligence and gross negligence.

Bear Stearns & Co., Inc., Bear Stearns Securities Corporation and Jack M. Pausman ("Respondents,") denied any wrongdoing or liability as alleged in the Claimants' Statement of Claim. Instead, Respondents said that while Claimants may have been disappointed in not profiting in the stock market, their accounts were handled with their full approval and in accordance with their stated investment objectives. Respondents explained that after Respondent Pausman met William Danner at a social event in December of 1994, when Mr. Danner approached him, he set up a meeting to discuss investing in the stock market, at which time Pausman also met William Danner's brother, James Danner. Respondents said that after new accounts were opened for both brothers and after they had spent many hours discussing each of the brothers' investments and the risks thereof, the brothers introduced their sister, Barbara Drake and her husband Maurice Drake to Pausman. According to the Respondents, the Claimants were at all times in control of their account, the investments made were appropriate for their background and investment goals, and that Claimants even ordered the sale of several conservative investments to purchase additional stock purchases. In addition, Respondents said that the Claimants routinely provided Pausman with purchase ideas of their own on a completely unsolicited basis. Respondents further noted that most of Claimants losses stemmed from their purchase of DSC Communications, which despite a strong history of growth, subsequently declined substantially in value. Therefore, Respondents said that Pausman's good faith recommendation, with notice of risk of the investment, was not actionable. Respondents asserted that the claims of the Claimants should be barred based on the following affirmative defenses: all transactions were expressly authorized by the Claimants; ratification; waiver; recommendations made to Claimants were made in good faith and based upon a sound factual or historical basis; failure to mitigate damages; the claims should be severed as they do not arise out of the same transactions; the applicable statutes of limitations; the equitable doctrine of laches; failure to set forth a cause of action upon which relief can be granted; the trading authorizations gave Pausman authority to exercise discretion in their accounts and so none of the transactions were unauthorized; all transactions were suitable and consistent with their expressed investment objectives; and, Claimants were in control of all activities in their accounts.

RELIEF REQUESTED

Claimants, James Danner, William O.G. Danner, Barbara Drake, William Oxford G. Danner Irrevocable Trust, Jimmie G. Danner, Trustee, Daniel M. Drake Trust, Jimmie and William Danner, Trustees, Estate of Acton G. Danner, James Danner, Executor, William Getty Stannley Irrevocable Trust, Jimmie and William Danner, Trustees, Estate of Oxford G. Danner, James Danner, Executor, and Barbara and Maurice Drake, requested an award for between \$100,000.00 and \$500,000.00 in actual damages and, or rescission of the transactions complained of, statutory and or punitive damages, costs and

pre and post-judgment interest and attorneys' fees. Claimants also requested all lost opportunities, consequential losses, including damages for mental anguish and emotional distress and all other such relief to which they are entitled.

Respondents, Bear Stearns & Co., Inc., Bear Stearns Securities Corporation, and Jack M. Pausman requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of Claimants, James Danner, William O.G. Danner, Barbara Drake, William Oxford G. Danner Irrevocable Trust, Jimmie G. Danner, Trustee, Daniel M. Drake Trust, Jimmie and William Danner, Trustees, Estate of Acton G. Danner, James Danner, Executor, William Getty Stannley Irrevocable Trust, Jimmie and William Danner, Trustees, Estate of Oxford G. Danner, James Danner, Executor, and Barbara and Maurice Drake, the undersigned Arbitrators have determined that Respondents, Bear Stearns & Co., Inc., Bear Stearns Securities Corporation, and Jack M. Pausman have 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 Respondents, Bear Stearns & Co., Inc., Bear Stearns Securities Corporation, and Jack M. Pausman did receive due notice of the hearing as required under Rule 10318 of the Code.

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 the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned Arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents Jack M. Pausman and Bear, Stearns & Co. Inc. are liable for and shall pay to Claimants James Danner, William O.G. Danner, Barbara Drake, William Oxford G. Danner Irrevocable Trust, Jimmie G. Danner, Trustee, Daniel M. Drake Trust, Jimmie and William Danner, Trustees, Estate of Acton G. Danner, James Danner, Executor, William Getty Stanley Irrevocable Trust, Jimmie and William Danner, Trustees, Estate of Oxford G. Danner, James Danner, Executor, and Barbara and Maurice Drake \$40,579.00 in compensatory damages and interest at a ten percent from December of 1995; and,

2. That Claimants James Danner, William O.G. Danner, Barbara Drake, William Oxford G. Danner Irrevocable Trust, Jimmie G. Danner, Trustee, Daniel M. Drake Trust, Jimmie and William Danner, Trustees, Estate of Acton G. Danner, James Danner, Executor, William Getty Stanley Irrevocable Trust, Jimmie and William Danner, Trustees, Estate of Oxford G. Danner, James Danner, Executor, and Barbara and Maurice Drake's claims against Respondents, Bear Stearns Securities Corporation are hereby dismissed with prejudice; and,
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 \$750.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300.00 = \$300.00 plus (+) there were thirteen (13) hearing sessions x \$750.00 = \$10,050.00 in forum fees. Pursuant to Rule 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 Rule 10332(c) of the Code, Claimants, James Danner, William O.G. Danner, Barbara Drake, William Oxford G. Danner Irrevocable Trust, Jimmie G. Danner, Trustee, Daniel M. Drake Trust, Jimmie and William Danner, Trustees, Estate of Acton G. Danner, James Danner, Executor, William Getty Stannley Irrevocable Trust, Jimmie and William Danner, Trustees, Estate of Oxford G. Danner, James Danner, Executor, Barbara and Maurice Drake, have paid to the NASD Regulation, Inc., Office of Dispute Resolution, the non-refundable filing fee of \$200.00 and have also paid the hearing session deposit of \$750.00. Claimants, James Danner, William O.G. Danner, Barbara Drake, William Oxford G. Danner Irrevocable Trust, Jimmie G. Danner, Trustee, Daniel M. Drake Trust, Jimmie and William Danner, Trustees, Estate of Acton G. Danner, James Danner, Executor, William Getty Stannley Irrevocable Trust, Jimmie and William Danner, Trustees, Estate of Oxford G. Danner, James Danner, Executor, Barbara and Maurice Drake, are jointly and severally liable for half the forum fees in this matter and shall pay the sum of \$4,650.00 to NASD Regulation, Inc., Office of Dispute Resolution. Respondents Jack M. Pausman and Bear, Stearns & Co. Inc. are liable for half the forum fees in this matter and shall pay the sum of \$4,650.00 to NASD Regulation, Inc., Office of Dispute Resolution.

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

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondents, Bear Stearns & Co., Inc., and Bear Stearns Securities Corporation, have paid to the NASD Regulation, Inc., Office of Dispute Resolution, the \$350.00 member surcharge previously invoiced.

Concurring Arbitrators' Signatures:

/s/ Ann Blaess Kimball

October 30, 1998

Ann Blaess Kimball, Esq.
Chairperson
Public Arbitrator

Date

/s/ James A. Hayden, II

October 30, 1998

James A. Hayden, II
Panelist
Public Arbitrator

Date

/s/ Delores Martin

November 10, 1998

Delores Martin
Panelist
Industry Arbitrator

Date