

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Tim Ashner

and

98-00456

Kansas City, Missouri

Name of Respondents

Bear Stearns & Company
Peter Marc Kaufman
Marc Alan Luxenberg
Salvatore Tacher
Kensington Wells Inc.
Adam Drew Levy

REPRESENTATION OF PARTIES

Tim Ashner ("Claimant") was represented by Paul D. Sinclair, Esq., Sinclair, Sawyer, Thompson, Haynes & Cowing, P.C., Kansas City, Missouri.

Bear Stearns & Company ("Respondent Bear Stearns") was represented by Peter D. Kerth, Esq. and Melanie R. King, Esq., Gallop, Johnson & Newman, L.C., St. Louis, Missouri.

Peter Marc Kaufman ("Respondent Kaufman") was represented by Gerald A. Kaufman, Esq., Huntington Station, New York.

Marc Alan Luxenberg ("Respondent Luxenberg") appeared at the hearing *pro se*.

Salvatore Tacher ("Respondent Tacher") did not appear at the hearing.

Kensington Wells Inc. ("Respondent Kensington") filed a petition under Chapter 11 of the U. S. Bankruptcy Code.

Adam Drew Levy ("Respondent Levy") was represented by Marc J. Ross, Esq., Sichenza, Ross & Friedman, LLP, New York, New York, prior to filing a petition under Chapter 11 of the U. S. Bankruptcy Code.

CASE INFORMATION

The Statement of Claim was filed on or about February 5, 1998. Amended Statement of Claim was filed on or about April 21, 1998. Second Amended Statement of Claim was filed on or about January 15, 1999. Claimant's Opposition to respondent Marc Luxenberg's Motion to Dismiss was filed on or about May 12, 1999. Third Amended Statement of Claim was filed on or about December 14, 1999. Submission Agreement of Claimant Tim Ashner was signed on February 4, 1998.

Answer of Respondent, Bear Stearns Securities Corp. to the Statement of Claim was filed on or about March 12, 1998. Answer of Respondent, Bear Stearns Securities Corp. to Claimant's Second Amended Statement of Claim was filed on or about February 16, 1999. Answer of Respondent, Bear Stearns Securities Corp. to Claimant's Third Amended Statement of Claim was filed on or about February 14, 2000. Bear Stearns Securities Corp. Motion for Judgment on the Pleadings or in the Alternative, for Summary Judgment was filed on or about March 20, 2000. Submission Agreement of Respondent Bear Stearns & Company was signed on March 10, 1998 by Mark E. Lehman.

Statement of Answer was filed by Respondent Peter Marc Kaufman on or about June 4, 1998. Letter dated December 6, 1999 further amending the Amended Answer for Respondent Peter Kaufman. Answer to the Third Amended Statement of Claim and Motion to Dismiss was filed on or about February 24, 2000.

Opposition to Claimant's Motion to Bar, Motion to Dismiss and Answer were filed on or about May 4, 1999. Reply to Claimant's Opposition to Respondent Marc Luxenberg's Motion to Dismiss was filed on or about May 19, 1999. Submission Agreement of Respondent Marc Alan Luxenberg was signed on April 30, 1999.

Respondent Adam Levy's Answer to Claimant's second Amended Statement of Claim was filed on or about December 17, 1998.

CASE SUMMARY

Claimant submitted the following summary:

Claimant asserted the following causes of action against Respondents: Breach of contract, including the duty of good faith and fair dealing, breach of fiduciary duty, negligent supervision, reckless disregard of duties, common law fraud, and violation of federal and Kansas state securities laws, all in connection with unauthorized trading at Kensington Wells, Inc. ("Kensington"), a former New York stock brokerage firm now in bankruptcy. The remaining Respondents include Peter Kaufman, claimant's broker, Bear Stearns Securities Corporation, the clearing broker with which Claimant had a direct contractual

relationship, Marc Alan Luxenberg, Kensington's Vice President for Compliance, and Salvador Tacher, an officer, director, stockholder and control person of Kensington.

Respondent Bear Sterns Securities Corporation ("Bear Sterns") hereby submits its Summary of the Case:

Claimant Timothy Ashner ("Ashner") has filed a statement of claim (the Third Amended Statement of Claim) against Peter Kaufman ("Kaufman"), Salvador Tacher, Marc Alan Luxenberg ("Luxenberg"), and Bear Sterns Securities Corporation ("Bear Sterns"). In the claim, Ashner has alleged that Kaufman sold 5,000 shares of Videolan Technologies without authorization on November 30, 1995 and purchased 10,000 shares of Iatros Health Network, Inc. on an unauthorized basis on December 1, 1995. Ashner has also alleged that Kaufman sold 5,000 shares of Videolan Technologies, Inc. and purchased 5,000 Videolan Technologies, Inc. warrants on January 22, 1996 without authorization. Ashner alleged a final unauthorized purchase of 5,000 Universal Automotive warrants on February 5, 1996. In addition to these claims of unauthorized trading, Ashner has alleged that he was charged excessive and undisclosed commissions on these trades. Ashner has alleged that Luxenberg, Tacher and Bear Sterns failed to diligently supervise Kaufman, and that Bear Sterns breached its fiduciary duty to Kaufman by failing to warn him of numerous complaints against Kensington Wells, the brokerage firm that employed Kaufman, including complaints of excessive trading and unauthorized trading. Ashner also alleges a breach of contract claim for failure to supervise Kaufman and Kensington Wells against Bear Sterns arising from the customer agreement between Bear Sterns and Ashner. Ashner seeks total damages in the amount of \$93,025.

Kaufman has denied all of the claims and asserts that he discussed all of the subject trades with Ashner and that the trades were authorized by Ashner.

Tacher has failed to respond to the claims or appear at the arbitration hearing.

Luxenberg has denied all of the claims and denies that he failed to perform his duties as compliance officer for Kensington Wells.

Bear Sterns denies all of the claims. Bear Sterns denies that it has any legal duty to supervise the sales activities of Kensington Wells or its broker, and asserts that it fully complied with all of its duties as a clearing broker, which was the only capacity in which it had any contractual or fiduciary duties to Ashner.

RELIEF REQUESTED

In the Third Amended Statement of Claim, Claimant requested an award of damages against Kaufman, Luxenberg, Tacher and Bear Stearns, jointly and severally, in the amount of \$181,442.00; prejudgment interest from and after the date of the purchase of the Iatros Health Systems stock on December 1, 1995 at the statutory prejudgment rate on the damages incurred by Claimant; prejudgment interest from and after the date of the order to transfer the Ashner account in February of 1996 at the statutory prejudgment rate on the damages incurred by Claimant; attorneys' fees; costs and expenses incurred herein; and such other and further relief as is just and proper under the circumstances.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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 Salvatore Tacher had been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Salvatore Tacher 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.

Respondents Peter Marc Kaufman and Salvatore Tacher did not file with the 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.

By letter dated May 18, 1999, the parties were advised that the Arbitration Panel had decided as follows:

Claimant's Motion to Bar the filing of an Answer or presentations of arguments or defenses with respect to Mr. Luxenberg is denied. Claimant's Motion to Bar the filing of an Answer or presentations of arguments or defenses with respect to Salvador Tacher is sustained. Nothing in the foregoing rulings shall prevent Respondent Bear Stearns or any other party from subpoenaing Mr. Tacher as a witness for attendance and testimony at hearing.

The Motion of Mr. Luxenberg to Dismiss is denied without prejudice to reassert said motion upon the presentation of evidence at the hearing.

The Motion of Mr. Luxenberg to file an Answer to the claim is sustained.

The NASD Regulation Inc. Office of Dispute Resolution has received a copy of the Notice filed in the United States Bankruptcy Court by Kensington Wells, Inc. under Chapter 11 of the Bankruptcy Code. Pursuant to these filings, all matters concerning this party are indefinitely stayed.

The NASD Regulation Inc. Office of Dispute Resolution has received a copy of the Notice filed in the United States Bankruptcy Court by Adam Drew Levy under Chapter 11 of the Bankruptcy Code. Pursuant to these filings, all matters concerning this party are indefinitely stayed.

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 (the "NASD").

AWARD

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

1. The claims asserted against all Respondents shall be and hereby are dismissed.
2. The panel confirms its earlier ruling that in the event that Claimant desired the presence of witness Peter Murphy, Claimant was to bear the reasonable costs of travel expenses. Therefore, Pursuant to Rule 10324 of the Code, Claimant shall be and hereby is liable for and shall pay the reasonable travel expenses of Peter Murphy.
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.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$200.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firms are Bear Stearns & Company and Kensington Wells Inc. The member fees assessed against Kensington Wells Inc. were waived as a result of its filing a petition under Chapter 11 of the U.S. Bankruptcy Code.

Member surcharge = \$1,500.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$2,500.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with a single arbitrator x \$300.00 = \$ 300.00
Pre-hearing conference(s): April 7, 2000 1 session

One (1) Pre-hearing session(s) with Panel x \$750.00 = \$ 750.00
Pre-hearing conference(s): December 2, 1999 1 session

Seven (7) Hearing sessions x \$750.00 = \$5,250.00
Hearing Date(s): April 12, 2000 2 sessions
April 13, 2000 2 sessions
April 14, 2000 2 sessions
April 25, 2000 1 sessions

Total Forum Fees = \$6,300.00

The Arbitration Panel has assessed \$3,150.00 of the forum fees to Tim Ashner.
The Arbitration Panel has assessed \$3,150.00 of the forum fees to Bear Stearns & Company.

Fee Summary

Claimant, Tim Ashner, shall be and hereby is liable for:

Initial Filing Fee	= \$ 200.00
<u>Forum Fees</u>	= <u>\$3,150.00</u>
Total Fees	= \$3,350.00
<u>Less payments</u>	= <u>\$ 950.00</u>
Balance Due NASD Regulation, Inc.	= \$2,400.00

Respondent, Bear Stearns & Company, shall be and hereby is liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= <u>\$3,150.00</u>
Total Fees	= \$7,750.00
<u>Less payments</u>	= <u>\$3,400.00</u>
Balance Due NASD Regulation, Inc.	= \$4,350.00

All balances are due to NASD Regulation, Inc.

Dated:

/s/ Robert A. Babcock
Robert A. Babcock, Esq.
Public Arbitrator, Presiding Chair

May 19, 2000

/s/ Eric T. Williams
Eric T. Williams, Esq.
Public Arbitrator

May 19, 2000

/s/ Frank A. Toplikar
Frank A. Toplikar
Industry Arbitrator

May 19, 2000

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Robert A. Babcock, Esq.
Public Arbitrator, Presiding Chair

Dated:

5-19-00

Eric T. Williams, Esq.
Public Arbitrator

Frank A. Toplikar
Industry Arbitrator

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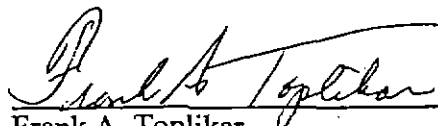
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Dated:

Robert A. Babcock, Esq.
Public Arbitrator, Presiding Chair

Eric T. Williams, Esq.
Public Arbitrator


Frank A. Toplikar
Industry Arbitrator

May 19, 2000

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Dated:

Robert A. Babcock, Esq.
 Public Arbitrator, Presiding Chair


 Eric T. Williams, Esq.
 Public Arbitrator

19 May 2000

Frank A. Toplikar
 Industry Arbitrator