

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Mark Landau, Claimant v. Providential Securities, Inc., Bear Stearns & Co., Inc., Andrew Shoemaker, and Barry Migliorini, Respondents.

Case Number: 98-02018

Hearing Site: Los Angeles, California

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**REPRESENTATION OF PARTIES**

For Claimant:  
Mark Landau

Alan Barkan, Esq.  
Lopshire & Barkan  
Woodland Hills, California

For Respondents:  
Barry Migliorini and  
Andrew Shoemaker

Robert E. Fitzgerald, Esq.  
Law Offices of Robert E.  
Fitzgerald, Esq.  
Falls Church, Virginia

Providential Securities, Inc. and  
Bear Stearns & Co., Inc.

Stephen Young, Esq.  
Keesal, Young & Logan  
Long Beach, California

**CASE INFORMATION**

Statement of Claim filed: May 8, 1998

Claimant's Uniform Submission Agreement signed: July 21, 1998

Statement of Answer filed by Respondents, Providential Securities, Inc. and Bear Stearns & Co., Inc.: October 26, 1998

Respondent Bear Stearns & Co., Inc.'s Uniform Submission Agreement signed: October 14, 1998

Respondent Providential Securities, Inc.'s Uniform Submission Agreement signed: October 22, 1998

Statement of Answer filed by Respondents Andrew Shoemaker and Barry Migliorini: October 26, 1998

Respondent Barry Migliorini's Uniform Submission Agreement signed: October 22, 1998

Respondent Andrew Shoemaker's Uniform Submission Agreement signed: October 22, 1998

### **CASE SUMMARY**

Claimant alleged fraudulent misrepresentation, negligent misrepresentation, churning, unsuitability, unauthorized trading, and violations of federal and state securities laws.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested \$270,000.00 in compensatory damages, punitive damages, interest, and reimbursement for costs and attorney's fees.

Respondents Providential Securities, Inc. and Bear Stearns & Co., Inc. requested dismissal of the Claimant's Statement of Claim in its entirety.

Respondents Andrew Shoemaker and Barry Migliorini requested dismissal of the Claimant's Statement of Claim in its entirety and expungement of their CRD records.

### **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.

### **AWARD**

After considering the pleadings, the evidence presented at the hearing, and the post-hearing submissions if applicable, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Bear Stearns and Co., Inc.'s Motion to Dismiss is granted.
2. All claims in Claimant's Statement of Claim are dismissed in their entirety.

3. Each party shall bear its own costs of arbitration, including attorney's fees.
4. All relief requested and not expressly granted is dismissed.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. has received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$ 200.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the event of the dispute. Accordingly, the member firms Bear Stearns & Co., Inc. and Providential Securities, Inc. are parties and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$ 2,500.00</u>
Total Member Fees	= \$ 4,600.00

#### **Adjournment Fees**

The following adjournment fees are waived by the Panel:

August 16-19, 1999, adjournment requested by Bear Stearns & Co., Inc. = \$ 750.00

#### **Forum Fees and Assessments**

The Arbitrator/Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

One Pre-hearing conference session with a single arbitrator @ \$ 300 = \$ 300.00  
Pre-hearing conference:  
July 20, 1999 1 session

Two Pre-hearing conference sessions with the Panel @ \$ 750 = \$ 1,500.00

Pre-hearing conferences:

December 17, 1998	1 session
June 25, 1999	1 session

Ten Hearing sessions @ \$ 750 = \$ 7,500.00

Hearing(s):

October 18, 1999	2 sessions
October 19, 1999	2 sessions
October 20, 1999	2 sessions
October 21, 1999	2 sessions
October 22, 1999	2 sessions

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Total Forum Fees = \$ 9,300.00

The Arbitration Panel has assessed \$ 9,300.00 of the forum fees jointly and severally to Providential Securities, Inc., Barry Migliorini and Andrew Shoemaker.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Mark Landau requested service: 57 copies	= \$ 57.00
Barry Migliorini requested service: 12 copies	= \$ 12.00

**Fee Summary**

1. Claimant Mark Landau is charged with the following fees and costs:

Initial Filing Fee	= \$ 200.00
<u>Administrative Costs</u>	= \$ 57.00
Total Fees	= \$ 257.00
<u>Less payments</u>	= \$ (950.00)
Refund Due Claimant Mark Landau	= \$ (693.00)

2. Respondent Bear Stearns & Co., Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Adjournment Fee</u>	= \$ 0.00
Total Fees	= \$ 4,600.00
<u>Less payments</u>	= \$ (4,600.00)
Balance Due NASD Regulation, Inc.	= \$ 00.00

3. Respondent Providential Securities, Inc., is charged with the following fees and costs:

<u>Member Fees</u>	= \$ 4,600.00
<u>Total Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ (4,600.00)
Balance Due NASD Regulation, Inc.	= \$ 00.00

4. Respondent Barry Migliorini is charged with the following fees and costs:

<u>Administrative Costs</u>	= \$ 12.00
<u>Total Fees</u>	= \$ 12.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$ 12.00

5. Respondents Providential Securities, Inc., Barry Migliorini and Andrew Shoemaker are charged jointly and severally with the following fees and costs:

<u>Forum Fee</u>	= \$ 9,300.00
Balance Due NASD Regulation, Inc.	= \$ 9,300.00

All balances are payable to NASD Regulation, Inc. and are due within 30 days of the award's date of service.

Concurring Arbitrators' Signatures

George M. Wiener  
Chair, Public Arbitrator  
George M. Wiener, Esq.

October 30, 1999  
Signature Date

Public Arbitrator  
Robert S. Granas

Signature Date

Industry Arbitrator  
Robert J. Juneman

Signature Date

11/5/99  
Date of Service

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Chair, Public Arbitrator  
George M. Wiener, Esq.

\_\_\_\_\_  
Signature Date

Robert S. Granas  
Public Arbitrator  
Robert S. Granas

OCTOBER 29, 1998  
Signature Date

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Industry Arbitrator  
Robert J. Juneman

\_\_\_\_\_  
Signature Date

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Date of Service

**Concurring Arbitrators' Signatures**

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Chair, Public Arbitrator  
George M. Wiener, Esq.

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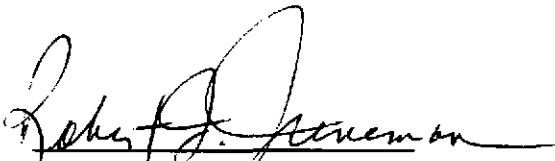
Signature Date

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Public Arbitrator  
Robert S. Granas

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Signature Date

  
Industry Arbitrator  
Robert J. Juneman

11/2/99  
Signature Date

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Date of Service