

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Leor Zahavi, (Claimant) vs. Armondo Ruiz, Dwight Sean Jones, Sunrise Capital Management LLC, ETA Management, Inc., Amaroq Management Company LLC, Amaroq Financial Services LLC, ING Baring Furman Selz LLC, Bear, Stearns & Company, Inc., and First Montauk Securities Corp., (Respondents)

Case Number: 98-03935

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Leor Zahavi, hereinafter referred to as "Claimant": Robert L. Herskovits, Esq., Bachner & Gehn, New York, NY.

Respondent, Dwight Sean Jones ("Jones"): Roni J. Hardy, Esq., sole practitioner, Santa Monica, CA.

Respondents, Bear, Stearns & Company, Inc. ("Bear Stearns") and ING Baring Furman Selz LLC ("Furman Selz"): Kevin T. Hoffman, Esq., Law Offices of Kevin Thomas Hoffman, Greenwich, CT.

Respondent, First Montauk Securities Corp. ("First Montauk"): Lloyd S. Clareman, Esq., sole practitioner, New York, NY.

Respondents, Armondo Ruiz ("Ruiz"), Sunrise Capital Management LLC ("Sunrise"), ETA Management, Inc. ("ETA"), Amaroq Management Company LLC ("Amaroq Management"), and Amaroq Financial Services LLC ("Amaroq Financial") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: October 21, 1998.

Amended Statement of Claim filed on or about: January 18, 1999.

Response to Furman Selz' Motion to Dismiss filed by Claimant on or about: March 22, 1999.

Response to Bear Stearn's Motion to Dismiss filed by Claimant on or about: April 28, 1999.
Claimant signed the Uniform Submission Agreement.

Statement of Answer to Amended Statement of Claim filed by Jones on or about: February 12, 1999.

Cross-claim against Furman Selz and Bear Stearns filed by Jones on or about: February 12, 1999.

Amended Cross-claim filed by Jones on or about: March 23, 1999.

Jones signed the Uniform Submission Agreement: April 1, 1999.

Statement of Answer to Amended Statement of Claim filed by Bear Stearns on or about: March 29, 1999.

Motion to Dismiss filed by Bear Stearns on or about: March 29, 1999.

Answer to Cross-claim filed by Bear Stearns on or about: May 18, 1999.

Bear Stearns signed the Uniform Submission Agreement: March 26, 1999.

Statement of Answer and Motion to Dismiss filed by Furman Selz on or about: December 14, 1998.

Statement of Answer to Amended Statement of Claim filed by Furman Selz on or about: February 17, 1999.

Response to Cross-claim filed by Furman Selz on or about: May 19, 1999.

Revised Motions to Dismiss filed by Furman Selz on or about: December 21, 1998 and February 17, 1999, respectively.

Furman Selz signed the Uniform Submission Agreement: December 15, 1998.

Statement of Answer and Motion to Dismiss the Amended Statement of Claim filed by First Montauk on or about: June 30, 1999.

First Montauk did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: fraud; breach of fiduciary duty; breach of contract; negligence; unsuitability; violation of state and federal securities laws; and violation of NASD rules.

Unless specifically admitted in his Answer, Jones denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's claim fails to state facts sufficient to constitute causes of action against the named Respondents; Claimant failed to exercise that quantity and quality of care and caution which reasonable individuals in Claimant's or similar circumstances would have exercised for the protection of themselves and their property; the damages suffered by Claimant, if any, were wholly or partially caused by the reckless, careless, and negligent acts or omissions of persons, firms, or entities other than the Respondents; if any injuries or damages found to have been suffered by Claimant were proximately contributed to by persons or entities other than Respondents, it is

necessary that the proportionate degree of negligence or fault of each such person or entity be determined and prorated accordingly; any alleged damages sustained by Claimant were wholly or partially caused by the reckless, careless, and negligent acts or omissions of third parties other than Jones; and Claimant's actions are barred by statute of limitations contained in the applicable Texas statutory authority which governs such actions.

In his Cross-claim against Furman Selz and Bear Stearns, Jones asserted the following causes of action: breach of contract; professional negligence; and breach of fiduciary duty.

Unless specifically admitted in its Answer, Bear Stearns denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state claims upon which relief can be granted and any loss sustained by Claimant was due solely to his decision to invest in a risky and speculative investment fund.

Unless specifically admitted in its Answer, Bear Stearns denied the allegations made in the Cross-claim and asserted the following defenses: Bear Stearns cannot be held liable for alleged breaches of a contract that it was not a party to; Bear Stearns had no fiduciary obligations to Jones; Jones' professional negligence claim is not meritorious; and the Cross-claim provides no basis, either factually or legally, for liability against Bear Stearns.

Unless specifically admitted in its Answer, Furman Selz denied the allegations made in the Statement of Claim and asserted the following defenses: Furman Selz has been improperly named in this arbitration in an attempt to reach a deep-pocketed party; Furman Selz had no duty to any investor in the Sunrise Fund to determine suitability nor did Furman Selz play any role in the investment decisions; and Claimant is estopped from attempting to broaden Furman Selz' responsibilities *ex post facto*.

Unless specifically admitted in its Response, Furman Selz denied the allegations made in the Cross-claim and asserted the following defenses: Claimant has not produced a contract that Furman Selz allegedly breached; Jones' professional negligence claim is not meritorious; and the Cross-claim provides no basis, either factually or legally, for liability against Furman Selz.

Unless specifically admitted in its Answer, First Montauk denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant lacks the right to compel arbitration between himself and First Montauk, as there is no customer relationship between Claimant and First Montauk; Claimant lacks standing to bring any claims against First Montauk; Claimant's primary claims are barred on the ground that any alleged oral misrepresentations were superseded by full written disclosure; Claimant's claims are barred by the doctrines of waiver, estoppel, and ratification; Claimant's losses, if any, were caused by the very risk factors which evidently were disclosed to him and which he was required to

have expressly agreed to undertake in connection with the investment in question; there is no privity or legal relationship between Claimant and First Montauk; the claims in this case are barred in whole or in part by the applicable statutes of limitation; any claims for negligence are barred by Claimant's comparative and/or contributory fault; attorney's fees may not be awarded against First Montauk in this matter, as there is no contractual or statutory basis cited in the Amended Statement of Claim for doing so; and no punitive damages may be awarded in this matter under applicable law or under the due process clause of the Constitution.

RELIEF REQUESTED

Claimant requested out-of-pocket damages of at least \$182,000.00; pre-judgement and post-judgement interest at a rate of 9% per annum; reasonable attorneys' fees; and punitive damages to be determined by the Panel.

Jones requested that Claimant take nothing by this action; that Jones be discharged hence with award of reasonable attorneys' fees and costs incurred; and such other and further relief as the Panel deems just and proper.

In his Cross-claim against Furman Selz and Bear Stearns, Jones requested damages in the approximate amount of \$700,000.00; special damages in a sum according to proof; pre-judgement interest at the legal rate; attorneys' fees; costs; and other just relief.

Bear Stearns requested that all claims against it be dismissed in their entirety; that it be awarded all costs of this arbitration, including reasonable attorneys' fees; and that all other just and necessary relief be awarded to them.

Furman Selz requested that all claims against it be dismissed in their entirety; that it be awarded all costs of this arbitration, including reasonable attorneys' fees; and that all other just and necessary relief be awarded to them.

First Montauk requested that the Claimant's claims in this matter be dismissed as against First Montauk and that all costs be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

First Montauk 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 the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Claimant named Respondents Ruiz and ETA in his original Statement of Claim, however his Amended Statement of Claim removed Ruiz and ETA as Respondents.

Sunrise, Amaroq Management, and Amaroq Financial were not members of the NASD, Inc. or associated persons at the time in question and declined to voluntarily submit to the proceeding.

Prior to the hearings in this matter, Claimant withdrew his claims against Bear Stearns and Furman Selz, with prejudice.

Prior to the hearings in this matter, Jones withdrew his Cross-claim against Bear Stearns and Furman Selz, with prejudice.

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 testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby denied.

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
Cross-claim filing fee	= \$ 500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Bear, Stearns & Company, Inc., ING Baring Furman Selz LLC, and First Montauk Securities Corp. are parties.

Bear, Stearns & Company, Inc.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

ING Baring Furman Selz LLC

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

First Montauk Securities Corp.

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

Forum Fees and Assessments

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

Two (2) Pre-hearing sessions with Panel x \$750.00	= \$1,500.00
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Pre-hearing conferences:	November 5, 1999	1 session
	March 17, 2000	1 session

Four (4) Hearing sessions x \$750.00	= \$3,000.00
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Hearing Dates:	July 6, 2000	2 sessions
	July 7, 2000	2 sessions

Total Forum Fees	= \$4,500.00
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1. The Panel has assessed \$1,500.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,500.00 of the forum fees against Jones.
3. The Panel has assessed \$1,500.00 of the forum fees against First Montauk.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 200.00
<u>Forum Fees</u>	= <u>\$1,500.00</u>
Total Fees	= \$1,700.00
<u>Less payments</u>	= <u>\$ 950.00</u>
Balance Due NASD Regulation, Inc.	= \$ 750.00

2. First Montauk be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= <u>\$1,500.00</u>
Total Fees	= \$6,100.00
<u>Less payments</u>	= <u>\$5,100.00</u>
Balance Due NASD Regulation, Inc.	= \$1,000.00

3. Jones be and hereby is solely liable for:

Cross-claim Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= <u>\$1,500.00</u>
Total Fees	= \$2,000.00
<u>Less payments</u>	= <u>\$2,000.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

4. Bear Stearns be and hereby is solely liable for:

Member Fees	= \$5,600.00
Total Fees	= \$5,600.00
<u>Less payments</u>	= <u>\$5,600.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

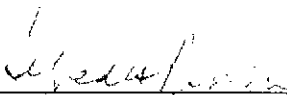
5. Furman Selz be and hereby is solely liable for:

Member Fees	= \$5,600.00
Total Fees	= \$5,600.00
<u>Less payments</u>	= <u>\$5,600.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

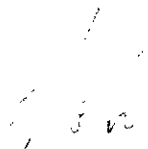
All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Alfred H. Kingon
Public Arbitrator, Presiding Chair



Signature Date

Bruce S. Boltuch
Public Arbitrator

Signature Date

Robert B. Kane
Industry Arbitrator

Signature Date

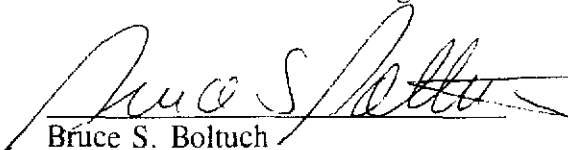
August 21, 2000
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

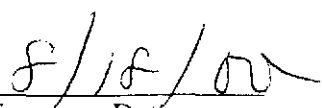
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Alfred H. Kington
Public Arbitrator, Presiding Chair

Signature Date



Bruce S. Boltuch
Public Arbitrator



Signature Date

Robert B. Kane
Industry Arbitrator

Signature Date

August 21, 2000

Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Alfred H. Kingon
Public Arbitrator, Presiding Chair

Signature Date

Bruce S. Boltmeh
Public Arbitrator

Signature Date

Robert B. Kane

Robert B. Kane
Industry Arbitrator

7/18/00
Signature Date

August 21, 2000
Date of Service (For NASD office use only)