

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Harris Trust Company of New York, (Claimant) vs. Bear Stearns & Co., Inc. and Sunrise Securities Corp., (Respondents) vs. Alfred J. Anzalone (Third-Party Respondent)

Case Number: 99-00328

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant Harris Trust Company of New York, hereinafter referred to as "Claimant": James A. Arpaia, Esq., Esq., Vedder, Price, Kaufman & Kammholz, Chicago, IL.

Respondents Bear Stearns & Co., Inc. ("Bear Stearns") and Sunrise Securities Corp. ("Sunrise"), hereinafter collectively referred to as "Respondents": Katherine Oberlies, Esq., Schlam Stone & Dolan, New York, NY.

Third-Party Respondent Alfred J. Anzalone ("Anzalone"): Mont E. Tanner, Esq., Law Office of Mont E. Tanner, Henderson, NV.

**CASE INFORMATION**

Statement of Claim filed on or about: January 22, 1999.

Claimant signed the Uniform Submission Agreement: January 20, 1999.

Statement of Answer and Third-Party Claim filed by Respondents on or about: August 24, 1999.

Bear Stearns signed the Uniform Submission Agreement: August 13, 1999.

Sunrise signed the Uniform Submission Agreement: August 24, 1999.

Statement of Answer to Third-Party Claim filed by Anzalone on or about: October 8, 1999.  
Anzalone did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: conversion of property and failure to maintain standards of commercial honor and principles of trade practices in violation of NASD Conduct Rule 2110. Claimant's claim involved the common stock of Interferon Sciences, Inc. ("Interferon").

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant has failed to state a claim upon which relief can be granted; the damages allegedly suffered by Claimant have no causal

relationship with any act committed by or legally attributable to Respondents; the purported wrongdoing on the part of Respondents was not the proximate cause of the losses for which Claimant seeks recovery; Claimant's own negligence and Anzalone's misappropriation of the Interferon shares are the proximate causes of any losses suffered by Claimant; neither Respondent ever engaged in "the unauthorized assumption and exercise of the right of ownership over goods belonging to another to the exclusion of the owner's rights", and thus they cannot be held liable for conversion under New York law; any damages attributable to Claimant's over delivery of shares to Anzalone's account were caused by Claimant's own negligence; and Claimant's claims are barred in whole or in part by the applicable statutes of limitations.

In their Third-Party Claim against Anzalone, Respondents asserted the following causes of action: conversion; money paid by mistake; money had and received; and breach of the duty of good faith and fair dealing.

Unless specifically admitted in his Answer, Anzalone denied the allegations made in the Third-Party Claim and asserted the following defenses: Respondents have failed to state a claim upon which relief may be granted; the purported wrongdoing on the part of Anzalone was not the proximate cause of the losses for which Respondents seek recovery; Respondents' own negligence, and/or the negligence of Claimant, are the proximate causes of any losses suffered by Respondents; the actions and/or omissions by Anzalone complained of by Respondents were authorized and ratified by them, and thus they may not be heard to complain of them now; Anzalone relied to his detriment upon the actions and/or misrepresentations of Respondent and/or Claimant, and thus any and all claims against him are barred by the doctrine of equitable estoppel; Respondents' claims against Anzalone are barred in whole or in part by the applicable statutes of limitation; and Anzalone has been prejudiced by Respondents' delay in bringing their claims against him, and thus is entitled to assert the defense of laches.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of at least \$206,250.00; punitive damages in an amount of at least \$250,000.00; pre-judgement interest; costs, expenses and disbursements; reasonable attorneys' fees; and such other relief as the Panel deems just and proper.

Respondents requested that an Award be entered against Anzalone for compensatory damages in the amount of at least \$206,250.00; pre-judgement interest; costs, expenses and disbursements; reasonable attorneys' fees; and such other relief as the Panel deems just and proper.

Anzalone requested that Respondents take nothing by way of their Third-Party Claim, and that he be awarded his costs, expenses and disbursements, reasonable attorneys' fees, and

such other relief as the Panel deems just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On January 29, 2001, Claimant informed NASD Dispute Resolution, Inc. that it had settled in full its claims against Respondents. NASD Dispute Resolution, Inc. shall retain Claimant's hearing session deposit as forum fees in accordance with Rule 10332(g) of the NASD Code of Arbitration Procedure.

Prior to the hearings in this matter, Anzalone asserted a Motion to Testify Telephonically. After due deliberation, the Panel granted Anzalone's Motion, but ordered Anzalone's attorney to appear in person at the hearings in this matter.

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. Anzalone be and hereby is liable for and shall pay to Respondents the sum of \$110,000.00 as compensatory damages, plus interest at the rate of 9% per annum accruing from the date of this Award until payment.
2. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim filing fee	= \$ 500.00
Third-Party 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 firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, Bear Stearns & Co., Inc. and Sunrise Securities Corp. are parties.

#### **Bear Stearns & Co., Inc.**

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

#### **Sunrise Securities Corp.**

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

### **Adjournment Fees**

Adjournments requested during these proceedings:

Jan. 31, 2001 and Feb. 1, 2001, adjournment by Anzalone	= \$ 750.00
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### **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:	August 2, 2000	1 session
	February 1, 2001	1 session

Three (3) Hearing sessions x \$750.00	= \$2,250.00
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Hearing Dates:	January 30, 2001	1 session
	March 13, 2001	2 sessions

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Total Forum Fees	= \$3,750.00
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1. The Panel has assessed all of the forum fees against Anzalone.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$1,250.00

<u>Less payments</u>	= \$1,250.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

2. Bear be and hereby is solely liable for:

<u>Member Fees</u>	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$5,300.00
Refund Due Bear	= \$ 700.00

3. Sunrise be and hereby is solely liable for:

<u>Member Fees</u>	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$4,077.97
Balance Due NASD Dispute Resolution, Inc.	= \$ 522.03

4. Respondents be and hereby are jointly and severally liable for:

<u>Third-Party Claim Filing Fee</u>	= \$ 500.00
Total Fees	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

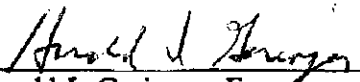
5. Anzalone be and hereby is solely liable for:

Adjournment Fee	= \$ 750.00
<u>Forum Fees</u>	= \$3,750.00
Total Fees	= \$4,500.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,500.00

All balances are due and payable to NASD Dispute Resolution, 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.

  
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Harold I. Geringer, Esq.  
Industry Arbitrator, Presiding Chair

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Signature Date

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John R. O'Hanlon, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Anthony E. Rapp  
Public Arbitrator

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

April 20, 2001  
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.

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Harold I. Geringer, Esq.  
Industry Arbitrator, Presiding Chair

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

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*John R. O'Hanlon, Esq.*  
John R. O'Hanlon, Esq.  
Public Arbitrator

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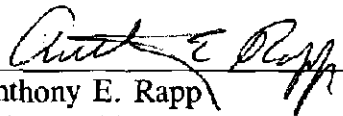
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