

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Mohammad Hamzeh v. Bear Stearns Securities Corporation and James Gallaer

Case Number: 99-959

Hearing Site: Southfield, Michigan

REPRESENTATION OF PARTIES

Claimant, Mohammad Hamzeh ("Hamzeh"), hereinafter referred to as "Claimant": David M. Foster, Esq., Farmington Hills, Michigan.

Respondent, Bear Stearns Securities Corporation, hereinafter referred to as "BSSC": Phillip C. Korovesis, Esq., Butzel Long, Detroit, Michigan.

Respondent, James P. Gallaer, hereinafter referred to as "Gallaer": did not appear

CASE INFORMATION

Statement of Claim filed on or about: February 23, 1999

Claimant, Mohammad Hamzeh, signed the Uniform Submission Agreement: February 23, 1999

Claimant, Nancy Hamzeh, signed the Uniform Submission Agreement: February 23, 1999

Statement of Answer and motion to Dismiss filed by Respondent BSSC, on or about: April 29, 1999

Respondent BSSC signed the Uniform Submission Agreement: April 28, 1999, by Mark E. Lehmar

Respondent BSSC's Supplemental Correspondence in Support of its Motion to Dismiss filed on or about: July 27, 1999

Claimants' Response to BSSC's Motion to Dismiss filed on or about: August 11, 1999

Respondent BSSC's Reply Brief in Support of its Motion to Dismiss filed on or about: August 24, 1999

Respondent BSSC's Supplemental Correspondence in Support of its Motion to Dismiss filed on or about: December 8, 2000

Claimant's Supplemental Correspondence in Response to BSSC's Motion to Dismiss: filed on or about December 8, 2000

Claimant's Supplemental Correspondence in Response to BSSC's Motion to Dismiss: filed on or about December 10, 2000

Respondent BSSC's Supplemental Correspondence in Support of its Motion to Dismiss filed on or about: December 14, 2000

Respondent, James Gallaer did not file a Statement of Answer

Respondent, James Gallaer, did not sign the Uniform Submission Agreement

CASE SUMMARY

- Claimants alleged breach of fiduciary duty of Respondent BSSC to supervise or investigate brokers they clear for; breach of fiduciary duty by Respondent Gallae for making reckless and unsuitable recommendations for a conservative investment account; fraudulent misrepresentations; and Michigan Blue Sky Law violations. In addition, at hearing, Claimants alleged unlawful trades occurred when BSSC cleared Claimants' purchases of stocks for which Kensington Wells ("KW") was a market maker. Claimants asserted that KW charged hidden fees and commissions, often higher than 10% percent of the purchase price.

In support of their causes of action, Claimants alleged that on July 30, 1992, BSSC and KW entered into an Agreement for Securities Clearance Services whereby KW agreed to pay BSSC \$25.00 per stock transaction plus \$.02 per share purchased or sold as compensation for all trades BSSC cleared for KW customers. Claimants asserted that, in addition, BSSC was to receive 2% above the broker call rate for any Kensington Wells customer margin account. Claimants stated that approximately one year after this Agreement, the Claimants signed a New Account Agreement with BSSC, a Margin Agreement with BSSC and wrote checks made out to "Bear Sterns" for all transactions that occurred. Claimants further stated that they received "margin notices" from BSSC.

Unless specifically admitted in its Answer, Respondent BSSC denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a cause of action against Respondent BSSC upon which relief may be granted; Claimants are precluded from any recovery against Respondent BSSC in this proceeding since BSSC acted in the limited capacity of clearing agent for Claimants' broker; Claimants are precluded from any recovery against Respondent BSSC in this proceeding since any damages allegedly sustained are the sole and direct result of conduct of parties other than BSSC; Claimants are precluded from any recovery against Respondent BSSC in this proceeding since they failed to exercise ordinary reasonable and prudent conduct in the monitoring, review and supervision of their account; Claimants are precluded from any recovery against Respondent BSSC since they failed to take reasonable action to mitigate the damages allegedly sustained; Claimants are precluded from any recovery against Respondent BSSC since at all times relevant hereto, Respondent BSSC acted in good faith, in compliance with all applicable securities laws, regulations and industry standards of conduct; and the Claims asserted against Respondent BSSC are barred by the applicable statutes of limitations.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested compensatory damages of \$307,305.00, punitive damages of \$921,975.00, plus interest, costs, and attorney fees of one-third of the award. At hearing, Claimants requested sanctions against BSSC.

Respondent BSSC requested dismissal and that costs of the arbitration proceeding be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent, James Gallaer, has neither been properly served with the Statement of Claim nor received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code"). The Panel did not adjudicate any claims against Respondent Gallaer.

Prior to the opening of the arbitration hearing, the parties orally agreed to allow Arbitrator William S. Gray, II, to serve as Chairperson of the panel in the above-captioned matter.

The Panel denied Respondent BSSC's Motion to Dismiss without prejudice on or about January 28, 2000.

The Panel denied Claimant's request at hearing for default judgment against Respondent Gallaer.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, Bear Stearns Securities Corporation, is solely liable for and shall pay to Claimants Mohammed Hamzeh and Nancy Hamzeh, jointly and severally, the sum of \$127,511.00 in compensatory damages;
- 2.) Respondent, Bear Stearns Securities Corporation, is solely liable for and shall pay to Claimants Mohammed Hamzeh and Nancy Hamzeh, jointly and severally, the sum of \$50,000.00 in sanctions for its failure to comply with the Panel's discovery deadlines established in Orders of August 8, 2000, and September 5, 2000;
- 3.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) That any relief not specifically enumerated, including punitive and treble damages is hereby denied with prejudice.

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 = \$ 200.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

September 19-20, 1999, adjournment by Claimant = \$ 750.00 (waived by Panel)

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 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 with a single arbitrator x \$300.00 = \$ 300.00

Pre-hearing conference: April 3, 2000 1 session

Two (2) Pre-hearing sessions with Panel x \$750.00 = \$1,500.00

Pre-hearing conferences: September 17, 1999 1 session

October 26, 1999 1 session

Three (3) Hearing sessions x \$750.00 = \$2,250.00

Hearing Dates: November 28, 2000 2 sessions

November 29, 2000 1 session

Total Forum Fees = \$4,050.00

The Panel has assessed \$2,025.00 of the forum fees jointly and severally to Mohammed Hamzeh and Nancy Hamzeh.

The Panel has assessed \$2,025.00 of the forum fees to Bear Stearns Securities Corporation.

NASD Dispute Resolution, Inc.
Arbitration # 99-859
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Fee Summary

Claimant, Mohammed Hamzeh, be and hereby is solely liable for:

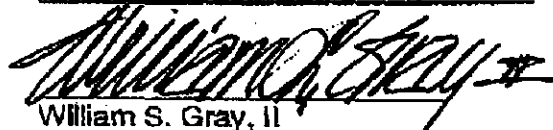
| | |
|---|---------------|
| Initial Filing Fee | = \$ 200.00 |
| Forum Fees | = \$ 2,025.00 |
| Total Fees | = \$ 2,425.00 |
| Less payments | = \$ 1,250.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 1,175.00 |

Respondent, Bear Stearns Securities Corporation, be and hereby is solely liable for:

| | |
|---|---------------|
| Member Fees | = \$ 4,600.00 |
| Adjournment Fee | = \$ 750.00 |
| Forum Fees | = \$ 2,025.00 |
| Total Fees | = \$ 7,375.00 |
| Less payments | = \$ 2,700.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 4,675.00 |

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures



William S. Gray, II
Public Arbitrator, Presiding Chair

JAN 29, 2001

Signature Date

INDUSTRY (WSG)

Levi T. Gardner, III, J.D.
Public Arbitrator

Signature Date

Gerald Edward Patera
Industry Arbitrator

Signature Date

PUBLIC →

Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.
Arbitration # 99-959
Award Page 5 of 5

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Public Arbitrator, Presiding Chair

Signature Date


Levi T. Gardner, III, J.D.
Public Arbitrator


Signature Date

Gerald Edward Patena
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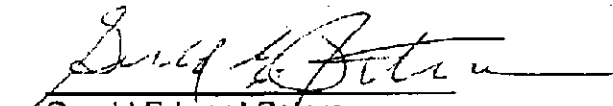
Concurring Arbitrators' Signatures

William S. Gray, II
Public Arbitrator, Presiding Chair

Signature Date

Levi T. Gardner, III, J.D.
Public Arbitrator

Signature Date



Gerald Edward Patera
~~Industry~~ Arbitrator
PUBLIC

1/29/01

Signature Date

Date of Service (For NASD office use only)