

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

David R. and Candyce A. Butz, Claimants, v. Erick Kuebler and Bear Stearns & Co., Inc. Respondents

Case Number: 99-01164

Hearing Site: St. Louis, MO

REPRESENTATION OF PARTIES

Claimants David R. Butz and Candyce A. Butz, (hereinafter referred to as "Claimants") were represented by David B. Helms, Esq. of Lewis, Rice & Fingersh, L.C., St. Louis, Missouri.

Respondents Erick Kuebler ("Kuebler") and Bear Stearns & Co., Inc. ("Bear Stearns") were represented by David R. Clouston, Esq. of Baker & McKenzie, Dallas, Texas.

CASE INFORMATION

Statement of Claim filed on or about: May 24, 1999.

Claimant signed the Uniform Submission Agreement: April 5, 1999.

Statement of Answer filed by Respondents on or about: June 4, 1999.

Respondent Bear Stearns signed the Uniform Submission Agreement on May 24, 1999.

Respondent Kuebler did not file an executed submission agreement.

CASE SUMMARY

Claimants asserted the following causes of action:

1. Excessive Margin Trading;
2. Excessive Option Trading;
3. Excessive Trading;
4. Common Law Violations;
5. Federal Securities Law, Section 10(b) and Rule 10(b) 5;
6. Illinois Security Law, 815 ILS 5/12;
7. Common Law Fraud;
8. Breach of Fiduciary Duty;
9. Violation of Self-Regulatory Organization Rules;
10. Negligent Supervision; and,

11. Federal control Person Liability.

Theses allegations are in connection with the sale by Respondents and purchase by Claimants of securities such as: Alliance World Dollar Government Fund, II, Inc., Oshman's Sporting Goods, Boston Chicken, and Heartport.

Unless specially admitted in their Answer, respondents denied all of the allegations listed in the Statement of Claim and set forth the following affirmative defenses:

1. Claimant controlled all of the investment activity;
2. Claimant is attempting to cherry-pick his losses;
3. The level of activity in the joint Accounts was consistent with Claimant's investment objectives;
4. The Statement of Claim fails to state a cause of action upon which relief may be granted;
5. Claimant is precluded from any recovery against Bear, Stearns because he failed to take reasonable and prudent action in order to mitigate his damages;
6. Claimant expressly authorized, approved, consented and/or ratified each and every transaction executed in his accounts;
7. Claimant failed to use the requisite diligence in monitoring, managing and handling his own accounts;
8. Bear, Stearns maintained an adequate and reasonable system of supervision and control of its employees including Mr. Kuebler;
9. Respondents acted in good faith, in accordance with industry standards of conduct and in compliance with all applicable securities laws and regulations; and,
10. Any damages that may have been sustained are the direct and proximate result of the conduct and or omissions of parties other than Bear, Stearns.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$ 1, 293,889.41
Interest	\$ Unspecified
Attorneys' Fees	\$ Unspecified

Respondents Kuebler and Bear, Stearns requested that the Statement of Claim be Dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Kuebler did not file with the NASD Dispute Resolution, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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. Respondents Bear Stearns & Company and Erick Kuebler are jointly and severally liable for and shall pay to Claimants David R. and Candyce A. Butz compensatory damages in the amount of \$749,500.00, plus interest at the rate of (10%) ten percent interest from February 12, 2001 until the award is paid in full;
2. In addition, Respondents Bear, Stearns & Company and Kuebler are jointly and severally liable for and shall pay to claimants \$198,643.32 in attorneys' fees. In deciding to award attorneys' fees, the panel considered the arguments of the parties, as well as the pleadings filed on their behalf, and determined that authority existed for an award of attorneys' fees to the Claimants;
3. The parties shall bear their own costs of arbitration, including any additional attorneys' fees, except for those specifically enumerated herein; and
4. Any and all relief not specifically addressed is 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

= \$250

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, the member firm (Bear Stearns) is a party.

Member surcharge	= \$2,500
Pre-hearing process fee	= \$4,500
Hearing process fee	= \$ 600

Adjournment Fees

Adjournments requested during these proceedings:

November 6, 2000 to November 10, 2000, adjournment by Claimants
= \$ 1000 (waived by the panel)

March 6, 2000 to March 10, 2000,
adjournment by Claimants = \$1,000

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:

Two (2) Pre-hearing sessions with a single arbitrator x \$300 = \$600
Pre-hearing conferences:

May 4, 2000
October 31, 2000

Three (3) Pre-hearing sessions with Panel x \$1,000 = \$3000
Pre-hearing conferences:

November 3, 1999
December 28, 1999
November 6, 2000

Ten (10) Hearing sessions x \$1,000 = \$10,000

Hearing Dates:	February 5, 2001	2 sessions
	February 6, 2001	2 sessions
	February 7, 2001	2 sessions
	February 8, 2001	2 sessions
	February 9, 2001	2 sessions

Total Forum Fees = \$13,600

The Panel has assessed \$13,600 of the forum fees to the Respondents jointly and severally.

Fee Summary

1. Claimants are solely liable for:

Initial Filing Fee	= \$ 250
Adjournment Fee	= \$ 1,000
<hr/> Total Fees	<hr/> = \$ 1,250
Less payments	= \$ 1,250
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

3. Respondent Bear Stearns & Company is solely liable for:

Member Fees	= \$ 7,600
Less payments	= \$ 7,600
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

4. Respondents Bear Stearns & Company and Erick Kuebler are jointly and severally liable for:

Forum Fees	= \$13,600
Less Payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$13,600

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signature(s)

William S. Radar, Esq.
Public Arbitrator, Presiding Chair

Signature Date

George M. Flanigan, Esq.
Public Arbitrator

Signature Date

Gregory C. Menne
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

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3/29/01
Signature Date

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