

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

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In the Matter of the Arbitration Between

Names of Claimants

Kenneth O. and Diana Eldridge

Case No. 99-02349

Name of Respondent

Wedbush Morgan Securities Inc.

Name of Third Party Respondent

Bear Stearns & Company

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**REPRESENTATION OF PARTIES**

For Kenneth O. and Diana Eldridge ("Eldridge"), hereinafter collectively referred to as "Claimants": H. Thomas Fehn, Esq., Fields, Fehn & Sherwin, Los Angeles, California.

For Wedbush Morgan Securities, Inc. ("Wedbush"), hereinafter referred to as "Respondent": Michael A. Thurman, General Counsel, Wedbush Morgan Securities, Inc., Los Angeles, California.

For Bear Stearns & Company ("Bear Stearns"), hereinafter referred to as "Third Party Respondent": Eugene Michael Kennedy, Esq., Fort Lauderdale, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: May 21, 1999.

Claimants signed the Uniform Submission Agreement: June 21, 1999.

Statement of Answer and Third Party Claim filed by Respondent Wedbush on or about: September 13, 1999.

Respondent Wedbush signed the Uniform Submission Agreement: September 9, 1999

Statement of Answer filed by Third Party Respondent Bear Stearns on or about: October 18, 1999.

Third Party Respondent Bear Stearns signed the Uniform Submission Agreement: August 28, 1999.

Counterclaim by Third Party Respondent Bear Stearns filed on or about: June 15, 2000.

Statement of Answer to the Counterclaim filed by Respondent Wedbush on or about: August

24, 2000.

### **CASE SUMMARY**

Claimant asserted the following: This arbitration involved the sale by Claimants during March 1998 of 10,000 shares of Shopping.com (IBUY) at \$39.00. This sale was confirmed by Wedbush Morgan and funds of \$381,971.00 were placed in Claimants' account. Thereafter, Wedbush questioned the trade but did not cancel it. The proceeds from this transaction have not been paid to Claimants.

Unless specifically admitted in its Answer, Respondent Wedbush denied the allegations made in the Statement of Claim and asserted the following: The transaction was more complicated than it appears on its face. In March 1998, when this claim arose, Wedbush was the clearing firm for Claimants' brokerage firm, Waldron & Co., Inc. Waldron or one of its customers had purchased shares of IBUY but did not receive delivery from Wedbush due to the failure to deliver the shares to Wedbush by the seller, a customer of Bear Stearns. Waldron instructed Wedbush to execute a buy-in of the missing shares. Wedbush issued the appropriate buy-in notice to Bear Stearns and polled the market. Claimants offered to sell 10,000 shares at \$39.00 a share, approximately \$12.75 above the prevailing market price at the time. Bear Stearns and its client refused to complete the transaction on the ground that the sale price was excessive. Claimants refused to accept the then-existing market price for these shares. In addition, Claimants may have previously received some or all of the proceeds of this transaction directly from Waldron and/or its principals, and may not be entitled to additional payments from Wedbush.

Respondent Wedbush asserted a third party claim against Bear Stearns which requested that Bear Stearns be required to complete the transaction at the price that Claimants sought or at a price determined by the Panel to be fair and just.

Unless specifically admitted in its Answer, Third Party Respondent Bear Stearns denied the allegations made in the third party claim and asserted the following: When Bear Stearns received notice of Claimants buy-in, it immediately contacted Wedbush to advise that sufficient shares had already been purchased to cover their short positions. Bear Stearns also advised that the buy-in price contemplated appeared to be unreasonable and wholly unrelated to the then current market price.

Third Party Respondent Bear Stearns asserted a counterclaim against Respondent Wedbush which alleged that Bear Stearns retained \$12.50 per share but delivered the remaining \$26.50 per share to Wedbush. Bear Stearns asserted that Wedbush has no proprietary right or ownership interest in the proceeds of the transaction.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$395,000.00 and punitive damages.

Respondent Wedbush requested that all claims be dismissed in their entirety. Further, Respondent Wedbush requested that if all claims were not dismissed, then Third Party Respondent Bear Stearns be directed to complete the transaction at the price determined by the Panel.

Third Party Respondent Bear Stearns requested that all claims be dismissed in their entirety. Further, Third Party Respondent Bear Stearns, in its counterclaim, requested compensatory damages of an unspecified amount, together with interest at the legal rate from March 21, 1998 through the date of payment of such award. In addition, Bear Stearns requested that if Claimants are entitled to less than \$26.50 per share, Wedbush should return any excess to Bear Stearns. If Claimants are not entitled to any additional payment from Wedbush, then Wedbush should return all sale proceeds to Bear Stearns.

#### **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 testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The third party claim of Respondent Wedbush against Third Party Respondent Bear Stearns is dismissed.

The counterclaim of Third Party Respondent Bear Stearns against Respondent Wedbush is dismissed.

Claimants shall pay \$250,000.00 to the Waldron & Co., Inc. deposit account #8440-6832 held at Respondent Wedbush as reimbursement for the \$250,000.00 advance received by Claimants from Waldron & Co., Inc. on or about April 16, 1998.

Upon satisfactory receipt of the \$250,000.00 set forth above, Respondent Wedbush shall pay the sum of \$265,000.00 to the Claimants, plus interest from March 1998 to September 30, 2000 in the sum of \$4,125.00.

Claimants' request for punitive damages is denied.

All other requests for relief not specifically addressed herein are 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	= \$300.00
Third party claim filing fee	= \$1,000.00
Counterclaim filing fee	= \$1,000.00

#### **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, the member firms are parties.

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

#### **Adjournment Fees**

Adjournments requested during these proceedings:

June 6 through June 8, 2000, adjournment requested by Respondent Wedbush. The adjournment fee of \$1,125.00 was waived by the arbitrators.

#### **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:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: May 5, 2000	1 session
Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conferences: January 4, 2000	1 session
July 6, 2000	1 session
Three (3) Hearing sessions x \$1,125.00	= <u>\$3,375.00</u>
Hearing Dates: August 28, 2000	2 sessions
August 29, 2000	<u>1 session</u>
Total Forum Fees	= \$6,075.00

The Panel has assessed \$3,037.50 of the forum fees to Respondent Wedbush.

The Panel has assessed \$3,037.50 of the forum fees to Third Party Respondent Bear Stearns.

### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

### Fee Summary

Claimants Kenneth O. and Diana Eldridge be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$300.00
Total Fees	= \$300.00
<u>Less payments</u>	<u>= \$300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondent Wedbush be and hereby is solely liable for:

Third Party Claim Filing Fee	= \$1,000.00
Member Fees	= \$4,600.00
<u>Forum Fees</u>	<u>= \$3,037.50</u>
Total Fees	= \$8,637.50
<u>Less payments</u>	<u>= \$6,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,537.50

Third Party Respondent Bear Stearns be and hereby is solely liable for:

Counterclaim Filing Fee	= \$1,000.00
Member Fees	= \$4,600.00
<u>Forum Fees</u>	<u>= \$3,037.50</u>
Total Fees	= \$8,637.50
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,662.50

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

### Concurring Arbitrators' Signatures

\_\_\_\_\_/s/\_\_\_\_\_  
David B. Salzman, Esq.  
Public Arbitrator, Presiding Chair

October 6, 2000  
Signature Date

/s/                      
Sterling F. Tremayne  
Public Arbitrator

October 9, 2000  
Signature Date

                    /s/                      
Lonnie K. Martens, Esq.  
Industry Arbitrator

October 6, 2000  
Signature Date

October 9, 2000  
Date of Service (For NASD-DR office use only)

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<u>Less payments</u>	<u>= \$300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondent Wedbush be and hereby is solely liable for:

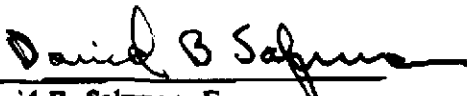
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David B. Salzman, Esq.  
Public Arbitrator, Presiding Chair

Oct 6, 2000  
Signature Date

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Sterling F. Tremayne  
Public Arbitrator

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Signature Date



Lonnie K. Martens, Esq.  
Industry Arbitrator

10-6-00  
Signature Date

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Date of Service (For NASD-DR office use only)