

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Estate of Clele J. Joseph,
Judith Ann Joseph Trust and
Joanne Milakovic Trust

and

99-02723
Indianapolis, Indiana

Name of Respondents

Bear Stearns Securities Corp.
Dennis Zator

REPRESENTATION OF PARTIES

Estate of Clele J. Joseph, Judith Ann Joseph Trust and Joanne Milakovic Trust (collectively as "Claimants") were represented by Thomas A. Hargett, Esq. and Andrew Stoltman, Esq., Maddox Koeller Hargett & Caruso, Indianapolis, Indiana.

Bear Stearns Securities Corp. ("**Respondent Bear Stearns**") and Dennis Zator ("**Respondent Zator**") were represented by Nicholas Iavarrone, Esq., Bellows & Bellows, A.P.C., Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about . Submission Agreements of Claimant Estate of Clele J. Joseph was signed on May 27, 1999 by Judith Ann Joseph and Joanne Milakovic as co-Personal Representatives of the Clele J. Joseph Estate. Submission Agreement of Claimant Judith Ann Joseph Trust was signed on May 27, 1999 by Judith Ann Joseph, as Trustee of the Judith Ann Joseph Trust and by Michael E. McCarthy, as Trustee of the Judith Ann Joseph Trust. Submission Agreement of Claimant Joanne Milakovic Trust was signed on May 27, 1999 by Joanne Milakovic., as Trustee of the Joanne Milakovic Trust.

Answer to Statement of Claim was filed by Respondents Bear Stearns Securities Corp. and Dennis Zator on or about December 1, 1999. Respondents' Motion to Dismiss the Claim of the Estate of Clele J. Joseph was filed on or about September 29, 2000. Submission Agreement of Respondent Bear Stearns Securities Corp. was signed on November 4, 1999 by Donald Tang. Submission Agreement of Respondent Dennis Zator was signed on November 2, 1999.

CASE SUMMARY

Claimants submitted the following summary:

The Claimants were: 1) the Estate of Clele Joseph; 2) Joanne Flannigan (identified as Joanne Milakovic in the Statement of Claim; and 3) Judy McCarthy (identified as Judy Joseph McCarthy in the Statement of Claim) who was dismissed as a Claimant before the hearing commenced. The Respondents were Dennis Zator and Bear Stearns Incorporated. Clele Joseph, the father of Joanne Milakovic, was declared mentally incompetent on April 20, 1994 and subsequently passed away on June 16, 1994. Clele Joseph's Bear Stearns brokerage account was divided equally between his two daughters, Joanne Milakovic and Judith McCarthy, in June of 1996. Both Claimants alleged unsuitable investment recommendations, churning, material misrepresentations, fraud and violations of the federal and state securities laws. Specifically, the Estate of Clele Joseph alleged Dennis Zator purchased unsuitable investments in highly risky securities utilizing margin and engaged in short term trading designed to generate commissions for Mr. Zator and Bear Stearns after Clele Joseph was declared mentally incompetent and before the account was divided between the two sisters. The Estate of Clele Joseph's account was turned over 4.3 times a year and needed to generate returns of 14.4% annually just to cover the commission and margin interest charged to the account. Joanne Milakovic, a retired school teacher with no prior investment experience, alleged Dennis Zator engaged in a trading scheme of inappropriate securities with the motivation of creating commissions that resulted in losses in her account of over \$129,000. The turnover in Joanne Milakovic's account was 3.17 times over the life of the account and the account needed to generate a return of at least 18% annually just to cover the commissions and the margin interest. In addition, both Claimants alleged that Bear Stearns failed to reasonably supervise Dennis Zator, who allegedly had a history of customer complaints by other clients in the past. The Respondents denied those allegations and claimed an adequate supervisory infrastructure was in place to guard against abuses.

Respondents submitted the following summary:

The case is an attempt by two daughters to recover for losses allegedly due to churning by their father's longtime account executive. The defense was that any alleged loss was a temporary market loss that was exacerbated by large withdraws [sic] from the accounts that were created from their father's estate. The claim of churning in the Estate of Clele Joseph is refuted by analysis used in reported security cases and law review articles. Using a trading strategy focused on undervalued small and mid-cap stocks, the father's account outperformed the market during an eight year period, 1986 to 1994. The same trading strategy was utilized in each of the daughters' accounts. The Estate account was profitable during the two years that it was in existence.

Judy Joseph withdrew her claim to her only account, not to any claims relating to the Estate account, at the start of the arbitration. Her personal account made money during the 14 months the account was open. Ms. Joseph had agreed to the same trading strategy as her father, and this was documented in letters and notes. Joanne Milakovic, the other daughter, followed the activity in the Estate account for two years before continuing with the same trading strategy. When the account executive charged in this case moved to a different brokerage house, Ms. Milakovic followed him. Ms. Milakovic made large withdraws [sic] from the account, over 40% in less than two years. These withdraws [sic], combined with her insistence to keep her account fully margined, resulted in her account losing value when the entire market declined. Throughout the existence of all three accounts, numerous conversations were documented, including letters from the branch manager confirming phone calls to each of the daughters, and documenting that each account was in fact a trading account.

RELIEF REQUESTED

The Estate of Clele Joseph requested the disgorgement of commissions and margin interest in the amount of \$164,068, "well managed" damages in the amount of \$97,440, reasonable attorney fees and costs in an amount to be determined by the Panel, expert fees in the amount of \$10,000 (which represents the total amount of the expert fees for the entire proceeding for both Claimants) and punitive damages. Joanne Milakovic requested compensatory damages in the amount of \$129,258, disgorgement of commissions and margin interest in the amount of \$97,577, "well managed" damages in the amount of \$238,394, reasonable attorney fees and costs in an amount to be determined by the Panel and punitive damages.

Respondents requested that the claims asserted against them be dismissed with prejudice.

OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. There is no award of damages to Claimants. The conduct of Respondents may not have been altogether appropriate, however, the actions do not rise to the level requiring the award of damages.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Bear Stearns Securities Corp.

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

Forum Fees and Assessments

The Arbitration 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(s) with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference(s): September 19, 2000 1 session	

One (1) Pre-hearing session(s) with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference(s): March 30, 2000 1 session	

Eight (8) Hearing sessions x \$1,125.00 = \$9,000.00

Hearing Date(s):	October 2, 2000	2 sessions
	October 3, 2000	2 sessions
	October 4, 2000	2 sessions
	<u>October 5, 2000</u>	<u>2 sessions</u>

Total Forum Fees = \$10,575.00

The Arbitration Panel has assessed \$5,287.50 of the forum fees jointly and severally to Claimants Estate of Clele J. Joseph, Judith Ann Joseph Trust and Joanne Milakovic Trust.

The Arbitration Panel has assessed \$5,287.50 of the forum fees jointly and severally to Bear Stearns Securities Corp. and Dennis Zator.

Fee Summary

Claimants, Estate of Clele J. Joseph, Judith Ann Joseph Trust and Joanne Milakovic Trust, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$5,287.50</u>
Total Fees	= \$5,587.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$4,162.50

Respondent, Bear Stearns Securities Corp., shall be and hereby is liable for:

<u>Member Fees</u>	<u>= \$4,600.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$4,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 600.00

Respondents, Bear Stearns Securities Corp. and Dennis Zator, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$5,287.50</u>
Balance Due NASD Dispute Resolution, Inc.	= \$5,287.50

All balances are due to NASD Dispute Resolution, Inc.

Dated:

/s/ Lawrence W. Arness

Lawrence W. Arness, Esq.
Public Arbitrator, Presiding Chair

October 27, 2000

/s/ James R. Kocher

James R. Kocher
Public Arbitrator

October 31, 2000

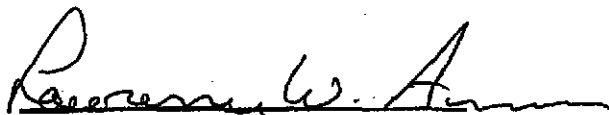
/s/ Patrick J. Burley

Patrick J. Burley
Industry Arbitrator

October 27, 2000

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All balances are due to NASD Dispute Resolution, Inc.


Lawrence W. Arnese, Esq.
Public Arbitrator, Presiding Chair

Dated:

10-27-00

James R. Kocher
Public Arbitrator

Patrick J. Burley
Industry Arbitrator

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Arbitration No. 99-02723
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Lawrence W. Arness, Esq.
Public Arbitrator, Presiding Chair


James R. Kocher
Public Arbitrator

October 31, 2000

Patrick J. Burley
Industry Arbitrator

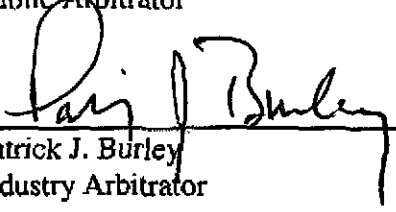
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Lawrence W. Arness, Esq.
Public Arbitrator, Presiding Chair

James R. Kocher
Public Arbitrator


Patrick J. Burley
Industry Arbitrator

10/27/03
