

**Award
NASD Regulation, Inc.**

In the Matter of the Arbitration Between:

Quentin Mitchell, Claimant vs. First Republic Group, LLC. and Bear, Stearns Securities Corp.,
Respondents.

Case Number: 99-02938

Hearing Site: Seattle, Washington

REPRESENTATION OF PARTIES

Claimant, Quentin Mitchell, hereinafter referred to as "Claimant": Quentin Mitchell, Stanwood, Washington

Respondent, First Republic Group, LLC.: Anthony R. La Grega, First Republic Group, LLC., New York, New York

Respondent, Bear, Stearns Securities Corp.: Nicholas K. Notias, Esq., Dowe, Capetanakis & Preite, New York, New York

CASE INFORMATION

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

Claimant's Reply to Respondent's Answer filed on or about: September 7, 1999

Amended Claim filed on or about: September 7, 1999

Claimant's Reply to Motions filed on or about: September 8, 1999

Claimant's Reply to Motions filed on or about: October 18, 1999

Claimant's Statement of Opposition to Motion to Dismiss filed on or about: March 28, 2000

Claimant, Quentin Mitchell, signed the Uniform Submission Agreement: June 10, 1999

Statement of Answer filed by Respondent, First Republic Group, LLC., on or about: August 18, 1999

Reply to Claimant's Amended Claim dated September 7, 1999, filed by Respondent, First Republic Group, LLC., on or about: September 27, 1999

Reply submission filed by Respondent, First Republic Group, LLC., on or about: October 26, 1999

Respondent, First Republic Group, LLC., signed the Uniform Submission Agreement: August 24, 1999

Steven A. Horowitz's correspondence setting forth Bear, Stearns Securities Corp.'s adoption of First Republic Group, LLC.'s Answer, filed on or about: November 5, 1999

CASE SUMMARY

Claimant alleged that Respondents acted unreasonably and contrary to NYSE rules and perhaps other applicable regulations regarding the liquidation of shares of Metris Companies Inc. ("Metris") stock to meet margin calls in Claimant's account.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant.

RELIEF REQUESTED

Claimant requested that the subject shares of Metris be restored to his account and that his account be credited with any appropriate dividends paid on Metris stock since the questioned liquidation of Metris stock in Claimant's account. Alternatively, Claimant requested damages in the approximate amount of \$22,000.00, and also requested costs.

Respondents requested that Claimant's claims be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Bear, Stearns Securities Corp. did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (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.

On or about April 20, 2000, the Arbitrator granted Respondents' request to participate in the arbitration hearing by telephone conference call.

AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the rules and regulations of NASD Regulation, Inc. Office of Dispute Resolution, including without limitation the Code and the submission agreements of the parties; having been duly sworn; having previously granted in part and denied in part the respondents' motion to dismiss; and having duly heard the proofs and allegations of claimant Quentin Mitchell and respondents First Republic Group, LLC. and Bear, Stearns Securities Corp. at hearing in Seattle, Washington, on May 9, 2000 now find, conclude and award as follows:

1. In the summer of 1997 claimant Quentin Mitchell opened a securities brokerage account with respondent First Republic Group, LLC. ("First Republic"). First Republic did not

clear its customers' trades, but used Bear, Stearns Securities Corp. ("Bear Stearns") for that purpose and to perform other "back office" functions. At the time he opened his account with First Republic, Mr. Mitchell executed a Customer Agreement with Bear Stearns.

2. One paragraph of the Bear Stearns Customer Agreement Mr. Mitchell executed deals specifically with margin calls:

[I] hereby agree to deposit and maintain such margin in [my] margin accounts as Bear Stearns may in its sole discretion require, and [I] agree to pay forthwith on demand any debit balance owing with respect to any of [my] margin accounts. ... Upon [my] failure to make any such payment or deposit, or if at any time Bear Stearns, in its sole discretion, deems it necessary for its protection, whether with or without prior demand, call or notice, Bear Stearns shall be entitled to exercise all rights and remedies provided in paragraphs 3.5 and 27 hereof. No demands, calls, tenders or notices that Bear Stearns may have made or given in the past in any one or more instances shall invalidate [my] waiver of the requirement to make or give the same in the future.

3. At all times material to this dispute, Mr. Mitchell was required to maintain an equity position in his account equivalent to at least 35% of the total market value of the securities in that account.
4. As permitted by First Republic, Bear Stearns and securities industry regulations, Mr. Mitchell used the equity in his account to purchase securities on "margin." Securities industry regulations require a customer buying on margin to maintain a minimum equity percentage. When securities prices drop, customers are notified that they must deposit additional funds to maintain the requisite margin percentage or securities in the account will be liquidated in order to maintain margin requirements.
5. In October 1998 Mr. Mitchell held two securities in his First Republic account, Fingerhut (1000 shares) and Metris (318 shares). The debit balance (i.e., margin debt) in Mr. Mitchell's account then amounted to approximately \$11,260.
6. At market close on October 1, 1998, the total value of the securities in Mr. Mitchell's account was approximately \$23,845. The equity portion of his account was approximately \$12,585, well above the minimum 35% equity requirement of \$8,346.
7. The market value of the securities in Mr. Mitchell's account dropped precipitously over the next several days. By close of the market on October 6, 1998 the total value of the

securities in Mr. Mitchell's account was approximately \$16,405. The equity portion of his account was approximately \$5,145; at a 35% equity requirement, Mr. Mitchell's equity position was required to be approximately \$5,742, resulting in an equity shortfall of \$597.

8. This equity shortfall precipitated a "margin maintenance call" of \$600 from Bear Stearns on October 7, 1998. The fact that the margin call was for \$3 more than actually required to satisfy margin requirements is immaterial. Mr. Mitchell received timely notice of the margin call and of the terms and conditions under which it was required to be satisfied.
9. Written notice of the margin call was provided to Mr. Mitchell's broker at First Republic, Mr. Dessiano, who called Mr. Mitchell on October 7 to notify him of the margin call. Mr. Dessiano told Mr. Mitchell to send a check for \$581 (the \$19 differential apparently due to a slight rise in stock prices in after-hours trading) by overnight courier to "Lucy" at First Republic. Mr. Mitchell did so. The check was received October 8, 1998, though the actual time of receipt is unknown. The \$581 was credited to Mr. Mitchell's account on October 9, 1998. There is no evidence that either First Republic or Bear Stearns acted improperly in processing Mr. Mitchell's check or in crediting it to his account.
10. By market close on October 7, 1998, the total value of the securities in Mr. Mitchell's account was approximately \$14,020. The equity portion of his account was approximately \$2,758; at a 35% equity requirement, Mr. Mitchell's equity position was required to be approximately \$4,906, resulting in a total equity shortfall of approximately \$2,148.
11. The rising shortfall in Mr. Mitchell's equity precipitated another "margin maintenance call" from Bear Stearns on October 8, 1998, this one for \$1,600. The fact that this margin call, coupled with the October 7 margin call, was for \$52 more than actually required to satisfy margin requirements is immaterial. Mr. Mitchell received timely notice of this margin call and of the terms and conditions under which it was required to be satisfied.
12. Written notice of this margin call was also provided to Mr. Mitchell's broker at First Republic, Mr. Dessiano. Mr. Mitchell learned of the additional margin call late morning Pacific Time on October 8 when he called to see if the \$581 check had arrived. Mr. Mitchell assumed (and Mr. Dessiano confirmed) that the \$1,600 margin call included the prior \$600 margin call. It did not. The total margin requiring satisfaction was, at that time, \$2,200.
13. Margin maintenance calls may be satisfied in one of two ways: the customer may send in cash in the amount of the call or, if the customer prefers, the customer can direct the

liquidation of sufficient securities to bring the equity portion of his account back up to the required 35% level. If a customer does neither, sufficient securities will be liquidated so as to bring the equity portion of his account back up to the required 35% level. Because of the 35% margin equity requirement, liquidating securities requires liquidating sufficient securities to yield proceeds equivalent to approximately 3.33 times the amount of the equity shortfall.

14. Mr. Mitchell could have satisfied the October 8, 1998 margin call by sending a check for \$1,600 for delivery by 9:30 am ET on October 9. He chose not to do so but instead to liquidate sufficient securities in his account to satisfy the call. During his October 8 telephone conference with Mr. Dessiano, Mr. Mitchell told Dessiano to sell sufficient Metris shares to satisfy the "net but unmet" margin call. Mr. Mitchell erroneously assumed that this amount was approximately \$1,020, resulting in an expected liquidation of approximately \$3,300 in securities. Because the \$581 check had not yet been credited to his account and the \$1,600 call on October 8 was in addition to the \$600 call on October 7, the actual "net but unmet" margin call was approximately \$2,200, resulting in the need to liquidate securities with a value of approximately \$7,260. Mr. Mitchell would not have acted differently if he had been told, or if he had appreciated, either that the total margin deficit was \$2,200 or that the \$581 check had not yet been credited to his account.
15. On October 9, 1998 Mr. Mitchell's entire Metris stock holdings were liquidated by First Republic to satisfy the margin calls on his account, resulting in proceeds of \$7,587.
16. Bear Stearns's calculations of margin requirements, and notices to Mr. Mitchell concerning same, were at all times lawful and proper. There is no evidence that Bear Stearns liquidated or directed the liquidation of Mr. Mitchell's Metris stock holdings.
17. First Republic's liquidation of Mr. Mitchell's Metris stock holdings was lawful and proper. The fact that the liquidation resulted in approximately \$320 more in proceeds than required to satisfy margin requirements is immaterial.
18. A portion of Mr. Mitchell's claim against respondents First Republic Group, LLC. and Bear, Stearns Securities Corp. was dismissed with prejudice by order dated April 20, 2000. Mr. Mitchell's remaining claim against respondents First Republic Group, LLC. and Bear, Stearns Securities Corp. is DENIED and dismissed with prejudice.
19. The parties shall each bear their respective costs including any attorney's fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$125.00

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 firms are parties.

Member surcharge = \$400.00

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 Panel x \$450.00 = \$900.00

Pre-hearing conferences: January 11, 2000 1 session
April 4, 2000 1 session

One (1) Hearing session x \$450.00 = \$450.00

Hearing Date: May 9, 2000 1 session

Total Forum Fees = \$1,350.00

1. The Panel has assessed \$450.00 of the forum fees to Claimant, Mitchell.
2. The Panel has assessed \$450.00 of the forum fees to Respondent, First Republic.
3. The Panel has assessed \$450.00 of the forum fees to 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. The parties did not incur administrative costs.

Fee Summary

1. Claimant, be and hereby is solely liable for:

Initial Filing Fee	= \$125.00
Member Fees	= \$ 0.00
Adjournment Fee	= \$ 0.00
Forum Fees	= \$450.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$575.00
<u>Less payments</u>	= \$575.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

2. Respondent, First Republic, be and hereby is solely liable for:

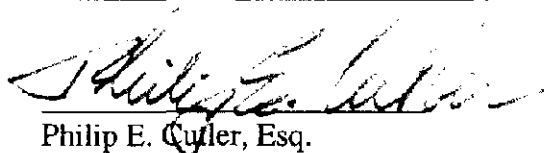
Filing Fee	= \$ 0.00
Member Fees	= \$400.00
Adjournment Fee	= \$ 0.00
Forum Fees	= \$450.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$850.00
<u>Less payments</u>	= \$400.00
Balance Due NASD Regulation, Inc.	= \$450.00

3. Respondent, Bear Stearns, be and hereby is solely liable for:

Filing Fee	= \$ 0.00
Member Fees	= \$400.00
Adjournment Fee	= \$ 0.00
Forum Fees	= \$450.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$850.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$850.00

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

Presiding Arbitrator's Signature



Philip E. Culler, Esq.

Public Arbitrator

Date Served:

JUN 7 2000

Date of Service (For NASD office use only)



Signature Date