

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Alvin Schubert and Elfriede Schubert, (Claimants) vs. Whale Securities Co., L.P., Barington Capital Group, L.P., Bear Stearns & Co., Inc., LNA Capital Corp., Jesse Bromberg, James A. Mitarotonda, Edwin Kantor, Mark Cooper, James N. Giordano, Jerome Snyder, John Rizzo, and John Telfer, (Respondents)

Case Number: 99-05177

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Alvin Schubert ("A. Schubert") and Elfriede Schubert ("E. Schubert"), hereinafter collectively referred to as "Claimants": Joseph F. Keenan, Esq., McCanliss & Early, LLP, New York, NY.

Respondent, Whale Securities Co., L.P. ("Whale"): David S. Richan, Esq., Blank Rome Tenzer Greenblatt LLP, New York, NY.

Respondents, Barington Capital Group, L.P. ("Barington"), Bear Stearns & Co., Inc. ("Bear"), LNA Capital Corp. ("LNA"), Jesse Bromberg ("Bromberg"), James A. Mitarotonda ("Mitarotonda"), Edwin Kantor ("Kantor"), Mark Cooper ("Cooper"), James N. Giordano ("Giordano"), Jerome Snyder ("Snyder"), John Rizzo ("Rizzo"), and John Telfer ("Telfer"): Stuart J. Jackson, Esq., Re, Parser & Partners, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: November 17, 1999.

A. Schubert signed the Uniform Submission Agreement: November 1, 1999.

E. Schubert signed the Uniform Submission Agreement: November 10, 1999.

Statement of Answer filed by Whale on or about: March 8, 2000.

Whale did not sign a Uniform Submission Agreement.

Joint Statement of Answer filed by Barington, Bear, LNA, Bromberg, Mitarotonda, Kantor, Cooper, Giordano, Snyder, Rizzo, and Telfer on or about: March 24, 2000.

Barington signed the Uniform Submission Agreement: February 22, 2000.

Bear did not sign a Uniform Submission Agreement.

LNA signed the Uniform Submission Agreement: February 22, 2000.

Bromberg did not sign a Uniform Submission Agreement.

Mitarotonda signed the Uniform Submission Agreement: February 22, 2000.

Kantor did not sign a Uniform Submission Agreement.
Cooper did not sign a Uniform Submission Agreement.
Giordano did not sign a Uniform Submission Agreement.
Snyder signed the Uniform Submission Agreement: December 17, 1999.
Rizzo signed the Uniform Submission Agreement: December 7, 1999.
Telfer did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability; misrepresentations and omissions of material facts; violation of the Securities Exchange Act of 1934; common law fraud; control person liability; failure to supervise; respondeat superior; negligence; breach of fiduciary duty; and breach of contract. Claimants' claim involved a variety of stocks and warrants.

Unless specifically admitted in their Answer, Barington, Bear, LNA, Bromberg, Mitarotonda, Kantor, Cooper, Giordano, Snyder, Rizzo, and Telfer denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants fail to state claims upon which relief may be granted; Claimants were fully advised of, and they understood, the nature of their investments and knowingly assumed and accepted the risks entailed in making those investments; any loss that Claimants incurred was caused, in whole or in part, by conditions and events outside the control of Respondents; Claimants failed to act promptly and with due diligence to mitigate their damages after they knew or should have known of the alleged acts and omissions of which they complain; Claimants are estopped or otherwise precluded from recovery under the doctrines of waiver, estoppel, and ratification; Claimant may not recover damages from Barington because it acted in good faith, exercised reasonable diligence, and maintained a reasonable system of supervision and control over its employees, including Bromberg; by failing to comply with the terms of their customer agreement, Claimants, either expressly or impliedly, or both, knowingly approved, authorized, participated in, or ratified all transactions in their account and, therefore, are estopped or otherwise precluded from recovery under the doctrines of waiver, estoppel, and ratification; each and every transaction in Claimants' accounts was suitable in light of Claimants' financial status and stated financial objectives; Bromberg's relationship with Claimants was that of a registered representative to a client, and therefore Bromberg and the Respondents generally did not owe a fiduciary duty to Claimants; and Claimants may not recover punitive damages in this proceeding, as they are neither supported by the facts nor permitted by applicable law.

RELIEF REQUESTED

Claimants requested:

- a. Compensatory damages in the approximate amount of \$240,000.00;
- b. Interest at the legal rate of nine percent (9%) per year;
- c. Recovery for the monies that Claimants would have received if their accounts were well managed;
- d. Punitive damages in the amount of double the compensatory damages to penalize the Respondents and to deter them from future unlawful conduct;
- e. Costs, expenses, and disbursements incurred in pursuing this proceeding, including reasonable attorneys' fees; and
- f. Such other relief as the Panel deems just and proper.

Barington, Bear, LNA, Bromberg, Mitarotonda, Kantor, Cooper, Giordano, Snyder, Rizzo, and Telfer requested that this claim be dismissed and that they be awarded the costs, forum fees, and attorneys' fees incurred in defending this unjustified proceeding, together with such other relief as may seem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearings in this matter, Claimants entered into a settlement agreement with Whale.

Prior to the hearings in this matter, Claimants withdrew their claims against Kantor, Cooper, Giordano, Snyder, Rizzo, and Telfer.

During the hearings in this matter, Bear made a Motion to Dismiss. The Panel granted said Motion after the Claimants rested their case.

Whale, Bear, Bromberg, Kantor, Cooper, Giordano, and Telfer did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

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

1. Claimants' claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby 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 = \$ 375.00

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 persons at the time of the events giving rise to the dispute. In this matter, Whale Securities Co., L.P., Barington Capital Group, L.P., and Bear Stearns & Co., Inc. are parties.

Whale Securities Co., L.P.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

Barington Capital Group, L.P.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

Bear Stearns & Co., Inc.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

Adjournment Fees

Adjournments requested during these proceedings:

April 10, 11 & 12, 2001, adjournment by Barington	= \$1,200.00
April 24 & 25, 2001, adjournment by Claimants	= \$1,200.00

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 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 Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: October 2, 2000 1 session	
Four (4) Hearing sessions x \$1,200.00	= \$4,800.00
Hearing Dates: July 10, 2001 2 sessions	
July 11, 2001 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$6,000.00

1. The Panel has assessed \$3,000.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$3,000.00 of the forum fees jointly and severally against Barington, LNA, Bromberg, and Mitarotonda.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$1,200.00
<u>Forum Fees</u>	<u>= \$3,000.00</u>
Total Fees	= \$4,575.00
<u>Less payments</u>	<u>= \$2,775.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,800.00

2. Whale be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$6,100.00</u>
Total Fees	= \$6,100.00
<u>Less payments</u>	<u>= \$2,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,500.00

3. Barington be and hereby is solely liable for:

Member Fees	= \$6,100.00
<u>Adjournment Fee</u>	<u>= \$1,200.00</u>
Total Fees	= \$7,300.00
<u>Less payments</u>	<u>= \$ 750.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$6,550.00

4. Bear be and hereby is solely liable for:

Member Fees	= \$6,100.00
Total Fees	= \$6,100.00
<u>Less payments</u>	<u>= \$6,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

5. Barington, LNA, Bromberg, and Mitarotonda be and hereby are jointly and severally liable for:

Forum Fees	= \$3,000.00
Total Fees	= \$3,000.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,000.00

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

ARBITRATION PANEL

Karimu F. Hill-Harvey, Esq.	-	Public Arbitrator, Presiding Chair
Robert Pincus, Esq.	-	Public Arbitrator
David Denison	-	Industry Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Karimu F. Hill-Harvey, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Robert Pincus, Esq.
Public Arbitrator

Signature Date

David Denison
Industry Arbitrator

Signature Date

August 17, 2001

Date of Service (For NASD office use only)

ARBITRATION PANEL


Karimu F. Hill-Harvey, Esq.	-	Public Arbitrator, Presiding Chair
Robert Pincus, Esq.	-	Public Arbitrator
David Denison	-	Industry Arbitrator

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Karimu F. Hill-Harvey, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Robert Pincus, Esq.
Public Arbitrator

7-31-01

Signature Date

David Denison
Industry Arbitrator

Signature Date

August 17, 2001

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Karimu F. Hill-Harvey, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Robert Pincus, Esq.
Public Arbitrator

Signature Date



David Denison
Industry Arbitrator



Signature Date

August 17, 2001

Date of Service (For NASD office use only)