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

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In the Matter of the Arbitration Between: Adrian J.R. Oosthuizen, Claimant vs. Bear, Stearns & Co., Inc. and Jedd F. Dunas, Respondents

Case Number: 99-05281

Hearing Site: San Francisco, California

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**REPRESENTATION OF PARTIES**

For Claimant:  
Adrian J.R. Oosthuizen

Glenn E. Westreich, Esq.  
Lillick & Charles LLP  
San Francisco, California

For Respondents:  
Bear, Stearns & Co., Inc. ("Bear Stearns")  
Dunas ("Dunas")

Kelly J. Moynihan, Esq.  
Keesal, Young & Logan Jedd F.  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: November 18, 1999

Claimant signed the Uniform Submission Agreement: November 11, 1999

Joint Statement of Answer filed by Respondents: March 13, 2000

**CASE SUMMARY**

Claimant asserted the following causes of action in his First Claim as set forth in his Statement of Claim: failure to execute a sale, failure to supervise and breach of fiduciary duty. Claimant alleged that Bear Stearn's broker Jedd Dunas failed to follow an instruction to sell certain shares of SoftNet, Inc. owned by Claimant. Claimant also alleged a Second Claim in his Statement of Claim. In the Second Claim, Claimant alleged that Bear Stearn's broker Jedd Dunas recommended for purchase shares of an unsuitable stock, namely Worldport Communications. During his opening statement at the arbitration hearing on May 21, 2001, Claimant, through his counsel, withdrew the Second Claim from his Statement of Claim. During his closing argument on May 23, 2001, Claimant's counsel reiterated that the Second Claim had been abandoned.

Respondents Bear Stearns and Dunas denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$5,095,100.00.

Respondents requested that all the claims against them in this matter be dismissed. Respondents also requested reimbursement for the costs associated with this arbitration.

### **OTHER ISSUES CONSIDERED AND DECIDED**

#### **Respondents' Submission to Arbitration**

Respondents Bear, Stearns & Co., Inc. and Jedd F. Dunas did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim and appeared and testified at the hearing, are bound by the determination of the Arbitration Panel on all issues submitted.

#### **Audio Recording of May 21, 2001 Hearing Session**

Due to an undetected mechanical defect in the audio recording device, the proceedings on May 21, 2001 from the beginning of the hearing through the end of the direct examination of Claimant Oosthuizen were not recorded, as required by NASD Code of Arbitration Procedure, Rule 10326(a). Upon discovery of the mechanical defect, the Parties, through their representatives, stipulated to the issuance of an Order requiring that the entirety of the Claimant's individual testimony, both on direct and cross-examination, during the presentation of his case in chief, would be completely unrecorded. Pursuant to this stipulation, and after receiving verbal assurances, on the record, from the parties that they agreed with their representatives' stipulation, the Panel ordered that the remainder of the Claimant's testimony, during the presentation of his case in chief, would remain unrecorded. On May 23, 2001, Claimant was called as a rebuttal witness to the Respondents' case in chief. At that time, the Panel ordered that such testimony on rebuttal would be recorded.

#### **Respondent Dunas' Motion for Expungement**

During the course of the arbitration hearing Respondent Dunas, through his counsel, made a motion for the expungement of all reference to the above captioned arbitration

NASD Dispute Resolution, Inc.

Arbitration No. 99-05281

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from his registration records maintained by the NASD Central Registration Depository ("CRD").

### **AWARD**

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

1. The Arbitration Panel finds in favor of the Respondents and against the Claimant. Accordingly, Claimant is not awarded any recovery in this case.
2. Respondent Dunas' request to have all reference to the above captioned arbitration removed from his registration records maintained by the NASD Central Registration Depository is denied.
3. The Parties shall bear their respective costs, including attorney's fees.
4. All relief requested and not expressly granted herein 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	= \$600.00
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#### **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 event(s) giving rise to the dispute. In this matter, the member firm is Bear, Stearns & Co., Inc.

Member surcharge	= \$3,000.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,600.00

**Forum Fees and Assessments**

The Arbitration Panel has the authority to assess 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 with Panel @ \$1,200.00/session = \$1,200.00  
Pre-hearing conference: January 4, 2001 1 session

Six (6) Hearing sessions @ \$1,200.00/session = \$7,200.00  
Hearing Dates: May 21, 2001 2 sessions  
May 22, 2001 2 sessions  
May 23, 2001 2 sessions

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Total Forum Fees = \$8,400.00

1. The arbitration panel has assessed \$4,200.00 of the forum fees to Claimant.
2. The arbitration panel has assessed \$4,200.00 of the forum fees jointly and severally to Respondents Bear Stearns and Dunas

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 4,200.00
Total Fees	= \$ 4,800.00
<u>Less payments</u>	= (\$ 1,800.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,000.00

2. Respondent Bear Stearns is charged with the following fees and costs:

Member Fees	= \$ 8,600.00
<u>Less payments</u>	= \$ (3,600.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,000.00

3. Respondents Bear Stearns and Jedd F. Dunas are charged jointly and severally with the following fees:

<u>Forum Fees</u>	= \$4,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,200.00

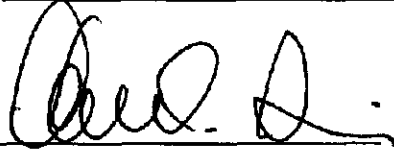
All balances are due to NASD Dispute Resolution, Inc.

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**ARBITRATION PANEL**

Edwin C. Shiver, Esq.	-	Public Arbitrator, Presiding Chair
Erwin Jay Shustak, Esq.	-	Public Arbitrator
Robert Shiffra, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signature(s)**



Edwin C. Shiver, Esq.  
Public Arbitrator, Presiding Chair

6/14/2001  
Signature Date

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Erwin Jay Shustak, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Robert Shiffra, Esq.  
Non-Public Arbitrator

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Signature Date

**Date Served:**

**JUN 20 2001**

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Date of Service (For NASD-Dispute Resolution office use only)

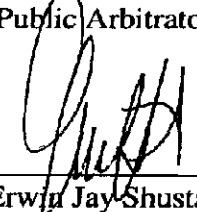
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Public Arbitrator, Presiding Chair

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Signature Date

  
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Erwin Jay Shustak, Esq.  
Public Arbitrator

6/14/01  
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Robert Shiffra, Esq.  
Non-Public Arbitrator

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Signature Date

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