

PACIFIC EXCHANGE
FUTURES & OPTIONS

PACIFIC EXCHANGE, INC.
301 Pine Street
San Francisco, California 94104

Alan Olsen)	PCX CASE #: 99-S012
)	
CLAIMANT)	DECISION IN THE MATTER
)	OF ARBITRATION BETWEEN
V)	ALAN OLSEN AND BEAR, STEARNS &
)	CO., INC., RICHARD LAVOICE AND
Bear, Stearns & Co., Inc., Richard LaVoice,)	PRESTON HAMMER
and Preston Hammer)	AND RELATED CROSS-CLAIM
)	
RESPONDENTS)	
)	
)	
Bear, Stearns & Co., Inc. and Richard LaVoice)	
)	
CROSS-CLAIMANTS)	
)	
V.)	
)	
Preston Hammer)	
)	
CROSS-RESPONDENT)	
)	

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant on March 19, 1999, and the Answer and related Cross-Claim of Respondents; having considered all testimony given on October 4, 5, and 6, 1999, and January 10, 11, 12 and 13, 2000 at San Francisco, California, at the hearings conducted; and, having considered all papers submitted in this matter, hereby render the following Decision pursuant to Rule 12.29(a) of the Rules of the Pacific Exchange:

REPRESENTATION OF PARTIES

Of Claimant: Brian Zagon, Esq. and Robert Gonser, Esq.
Resolution Law Group - Lafayette, CA

Glenn Allen, Esq.
Hassard Bonnington - San Francisco, CA

Of Respondents Bear, Stearns & Co., Inc. and Richard LaVoice:
Steven Young, Esq. and Philip McLeod, Esq.
Keesal, Young & Logan - San Francisco, CA

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Of Respondent Preston Hammer:

Richard Jaeger, Esq.

Feldman Waldman & Kline - San Francisco, CA

SUMMARY OF CASE

On May 3, 1996, Claimant Alan Olsen ("Claimant") opened an individual account ("the Account") with Respondents Preston Hammer ("Respondent Hammer") and Bear, Stearns & Co., Inc. ("Respondent Bear, Stearns & Co., Inc.")¹ Claimant previously had accounts with Respondent Hammer while he was employed at Montgomery Securities and opened his Bear Stearns Accounts when Respondent Hammer became employed there. During the first week of June 1998, Claimant deposited \$2,570,000.00 into the Account.

Claimant alleges that Respondent Hammer made numerous, unauthorized trades on margin in the Account, and disregarded Claimant's instructions that all transactions be discussed with him prior to being made, and that the equity position in the Account be at least 75%. In July 1998, Claimant instructed Respondent Hammer to sell his positions in Sportline USA, Inc. ("SPLN"), Earthlink Network Inc. ("ELNK"), Interplay Entertainment Corp. ("IPI.Y"), HBO & Co. ("HBOC") and IIA-LO Industries ("IIMK"). A portfolio report faxed from Respondent Bear, Stearns & Co., Inc. on July 23, 1998, by Respondent Hammer, represented that the shares of all these stocks had been sold. However, when Claimant received his August 1998 monthly statement from Respondent Bear, Stearns & Co., Inc. it was inconsistent with the verbal and written representations he received from Respondent Hammer.

Respondent Hammer acknowledged that trading errors had been made, and offered verbally and in writing to reimburse Claimant for the losses in the Account. A check for \$70,000.00 was given to Claimant by Respondent Hammer to cover the \$67,297.00 residual debit in the Account, but was rejected for insufficient funds. Claimant alleges that Respondents' unauthorized trading, failure to follow instructions, and lack of supervision caused him substantial losses. The Account was liquidated in September 1998 to meet Respondent Bear, Stearns & Co., Inc.'s margin calls.

Respondent Bear, Stearns & Co., Inc. asserts that Claimant was a sophisticated investor, and that he assured Respondent Bear, Stearns & Co., Inc. that he carefully followed the activity in the Account, and wanted to trade aggressively. Respondent Bear, Stearns & Co., Inc. also asserts that Claimant signed a Trading Authorization granting Respondent Hammer discretion to trade from the Account. Respondent Bear, Stearns & Co., Inc. alleges that Claimant did not instruct Respondent Richard La Voice ("Respondent LaVoice") to keep Claimant's equity at 75%, and that on August 3, 1998, when Respondent Bear, Stearns & Co., Inc. sent Claimant a letter asking him to make sure the activity in the Account was consistent with his objectives, Claimant signed and returned the letter on August 21, 1998.

Respondent Bear, Stearns & Co., Inc. alleges that the Account statements Claimant attached to his Statement of Claim are so obviously false that he could not have reasonably relied upon them. The Account statements have no Bear Stearns logo or other markings on them, there is no disclaimer, some had written notations on

¹ Preston Hammer and Bear, Stearns & Co., Inc. sometimes are collectively referred to herein as "Respondents"

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them, and the July 24 statement has the year dated as 1998. Respondent Bear, Stearns & Co., Inc. alleges that Claimant had to know that Respondent Hammer had produced them outside of the Bear Stearns system. Respondent Bear, Stearns & Co., Inc. also asserts that Claimant had to have known that the Account statements and promissory notes were irregular.

ISSUES FOR RESOLUTION

1. Did Respondent Hammer defraud Claimant Alan Olsen?
2. Did Respondent Hammer engage in unauthorized trading?
3. Did Respondent Hammer fail to follow Claimant's instructions?
4. (a) Did Respondent Bear Stearns & Co., Inc., and
(b) Did Respondent Richard LaVoice fail to supervise Respondent Hammer?
5. Did Respondent Bear, Stearns & Co., Inc. breach the contract with Claimant?
6. Did Respondent Hammer act completely outside the scope of his employment with Bear, Stearns & Co., Inc.?
7. Did Respondent Hammer conceal his acts from Respondents Bear, Stearns & Co., Inc. and Richard LaVoice?

RELIEF REQUESTED

A. By Claimant:

Claimant Alan Olsen requests compensatory damages in the amount of \$3,550,091.00, including prejudgement interest plus attorney's fees of approximately \$241,000.00; expert witness' fees of \$29,283.00; and cost of \$26,916.00; totaling approximately \$3,840.00. In addition, Claimant requests punitive damages at the discretion of the Arbitration Panel.

B. By Respondent and Cross-Claimant:

1. Respondent and Cross-Claimant Bear, Stearns & Co., Inc. requests that damages be limited by the Arbitration Panel in light of the conduct of the Claimant.
2. Respondent Richard LaVoice requests dismissal from the case.
3. Respondent Hammer requests damages be limited by the Arbitration Panel in light of the conduct of the Claimant and the inadequate supervision by Respondent Richard LaVoice.

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DECISION

The Arbitration Panel, after 14 hearing sessions of taking evidence, both oral and documentary, having evaluated all evidence and the credibility and weight thereof, and having given due weight and probative value to the evidence, unanimously and in full, complete and final resolution of the issues presented to it, enters its decision as follows:

A. Findings:

- 1 Respondent Preston Hammer did defraud Claimant Alan Olsen.
- 2 Respondent Preston Hammer engaged in unauthorized trading for Claimant's account.
- 3 Respondent Preston Hammer failed to follow Claimant's instructions.
- 4 (a) Respondent Bear Stearns & Co., Inc. failed to effectively supervise Mr. Hammer by reason of inadequate policies and procedures; and
(b) Respondent Richard LaVoice's supervision of Preston Hammer was within the policies and procedures of Bear Stearns
- 5 Respondent Bear, Stearns & Co., Inc. breached its contract with Claimant.
- 6 Respondent Preston Hammer acted within the scope of his employment.
- 7 Respondent Richard LaVoice acted within the scope of his employment.
- 8 Respondent Preston Hammer concealed his acts from Respondents Bear, Stearns & Co., Inc. and Richard LaVoice.

B. Award

- 1 Claimant Alan Olsen is awarded three million nine hundred thousand dollars (\$3,900,000.00)² jointly and severally against Respondents Bear, Stearns & Co., Inc. and Preston Hammer. The award rendered is inclusive of attorneys' fees and costs.
- 2 Respondents are assessed forum fees and pre-hearing sessions conference fees in the amount of twenty-eight thousand and eight hundred dollars (\$22,800).³
- 3 Claimant's claim against Respondent Richard LaVoice is denied.
- 4 Cross-Claimant Bear, Stearns & Co., Inc.'s claim for complete indemnity from Cross-Respondent Preston is denied.

² Pursuant to PCX Rule 12.29(h), monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If award is not paid within thirty (30) days, or if the award is the subject of a motion to vacate which is denied, interest shall accrue at the legal rate from the date of the award.

³ Forum fees are assessed at the rate of \$1,500.00 per hearing session. The pre-hearing conference held on September 13, 1999 is assessed at a rate of \$300.00, and the September 28, 1999 pre-hearing conference is assessed at a rate of \$1,500.00 because the full Panel participated.

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Date: February 8, 2000



Harve Citrin, Esq. - Chairman

Date: February ___, 2000

Arthur Bernstein, Esq. - Public Arbitrator

Date: February ___, 2000

Jane Gundermann - Industry Arbitrator

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Date: February ____, 2000

Harve Cizin, Esq. - Chairman

Date: February ____, 2000

Arthur Bernstein, Esq. - Public Arbitrator

Date: February 9, 2000

Frei Gundermann
Frei Gundermann - Industry Arbitrator

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Date: February ____, 2000

Harve Citron, Esq. - Chairman

Date: February 10, 2000

Arthur H Bernstein
Arthur Bernstein Esq. - Public Arbitrator

Date: February ____, 2000

Jane Gundermann - Industry Arbitrator