

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

 In the Matter of the Arbitration Between :
 :
 Intercredit, S.A. :
 Claimant :
 :
 vs. : Award
 : Case #90-01172
 :
 Bear Stearns & Co., Inc. and :
 Carlos Otalvaro :
 Respondents :

Heard before:

Allen Kilik
 Henry McCoy, II, Esq.
 Catherine Ladnier

Public Arbitrator
 Public Arbitrator
 Industry Arbitrator

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 24, 1990 Claimant Intercredit, S.A. alleged the Respondents mismanaged the Claimant's portfolio and claimed that Respondents' actions constituted fraud under the meaning of the federal securities laws, and specifically were guilty of churning; breach of fiduciary duty; common law fraud; and breach of contract and violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). In addition, the Claimant alleged the Respondent Bear Stearns & Co., Inc. as Carlos Otalvaro's employer failed to supervise its employee and aided and abetted his misconduct. The Respondents Bear Stearns & Co., Inc. and Carlos Otalvaro maintained the number of trades were a result of a hedging strategy that helped to limit losses from the option writing and was agreed upon and conducted with the Claimant's knowledge and support and further maintained the trading of options was fully disclosed to the Claimant and the Claimant had full knowledge of the number, type and price of the options being written and traded. The Respondents further maintained the Respondent Carlos Otalvaro had actual and apparent authority to act with Bear Stearns & Co., Inc. on this account and Bear Stearns & Co., Inc. maintained a reasonable system of supervision and control over Carlos Otalvaro. The Respondents further maintained there was no breach of contract or breach of fiduciary duty and the Claimant knowingly undertook certain risks and lost monies on account of its own decisions and conduct and the Claimant is not entitled to damages under the RICO statute and is not entitled to punitive damages as the Claimant knew, understood, monitored and supervised the actual trading in its accounts.

RELIEF REQUESTED

Claimant requested compensatory damages of \$513,860.61 together with interest on that amount from November 19, 1989, plus damages under the RICO statute in the sum of \$1,541,581.83, plus attorneys' fees, expenses and punitive damages of approximately \$5,000,000.00. Respondents requested dismissal of claim and such other relief as may be just, proper and equitable.

AWARD

On January 14 and 15, 1991, February 7 and 8, 1991, March 10, 11, and 12, 1991, and April 4, 1991 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Intercredit, S.A. on March 23, 1990 and by Respondent Bear Stearns & Co., Inc. on October 11, 1990 and by Respondent Carlos Otalvaro on October 12, 1990. The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. located in New York City, New York and consisted of fifteen (15) hearing sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. The Respondents Bear Stearns & Co. Inc. and Carlos Otalvaro be and hereby are liable jointly and severally and shall pay to the Claimant the sum of One Hundred Sixty-Four Thousand Dollars and No Cents (\$164,000.00), inclusive of interest.
2. The parties shall each bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$1,000.00 filing fee previously deposited by the Claimant. In addition, the Respondents Bear Stearns & Co. Inc. and Carlos Otalvaro be and hereby are liable jointly and severally and shall

pay to the National Association Securities Dealers, Inc. the sum of \$21,800.00 to represent forum fees.

ARBITRATORS SIGNATURE

Allen Kilik

Allen Kilik

Henry McCoy II

Henry McCoy, II, Esq.

Catherine Ladnier

Catherine Ladnier

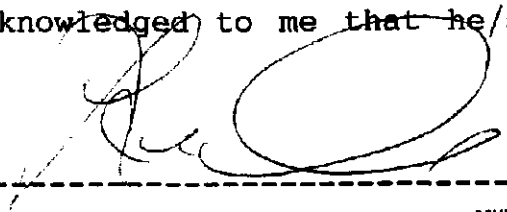
Date of Decision: *May 7*, 1991

STATE OF *NY*

COUNTY OF *NY*

S.S.:

On this *24th* day of *April*, 1991,
before me personally appeared Allen Kilik known to me to be the
individual described in and who executed the foregoing
instrument and be duly acknowledged to me that he/she executed
the same



LEONARD J. AMORUSO
NOTARY PUBLIC, State of New York
No. 4964931
Qualified in Nassau County
Commission Expires April 16, 1992

STATE OF *New York*

COUNTY OF *New York*

S.S.:

on this *3rd* day of *May*, 1991,
before me personally appeared Henry McCoy, II, known to me to be
the individual described in and who executed the foregoing
instrument and be duly acknowledged to me that he/she executed
the same



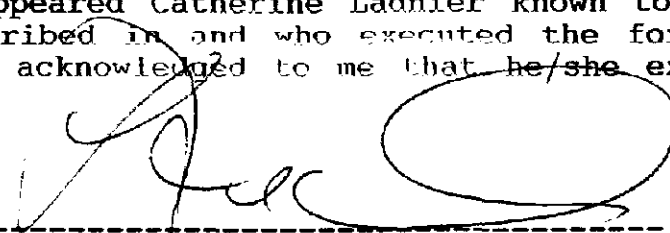
LEONARD J. AMORUSO
NOTARY PUBLIC, State of New York
No. 31-306573
Qualified in New York County
Commission Expires April 30, 1993

STATE OF *NY*

COUNTY OF *NY*

S.S.:

On this *24th* day of *April*, 1991,
before me personally appeared Catherine Ladnier known to me to
be the individual described in and who executed the foregoing
instrument and be duly acknowledged to me that he/she executed
the same



LEONARD J. AMORUSO
NOTARY PUBLIC, State of New York
No. 4964931
Qualified in Nassau County
Commission Expires April 16, 1992