

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, New York 10004

In the Matter of the Arbitration Between

Name of Claimant(s)MM Color, Inc., MM Color Products  
Retirement Trust

90-02814

Name of Respondent(s)Bear Stearns & Company  
Gary R. Feldman  
Simon K. SchafflerREPRESENTATIONFor Claimants: Jerome L. Graf of Stern, Steiger, Croland, Tanenbaum &  
Schielke, PA.

For Respondents: James M. Hubbert, Esq. of Bear Stearns &amp; Co., Inc.

CASE INFORMATION

Statement of Claim filed: October 10, 1990.

Claimants' Submission Agreement signed: 1/2/91 by Jeffrey Jones.

Joint Statement of Answer for all Respondents dated: 3/18/91

Respondent, Bear Stearns, Inc.'s Submission Agreement signed: 3/91 by  
Raymond L. Aronson on behalf of the firm.

Respondent, Gary R. Feldman's Submission Agreement signed: 3/15/91.

Respondent, Simon Schaffler's Submission Agreement signed: 3/15/91

HEARING INFORMATION

Hearing Date: 9/11/91-Two (2) Sessions.

Hearing Date: 9/12/91-One (1) Session.

Total number of sessions-Three-(3).

Hearing Location: New York City, NY.

NWD-490-02814

National Association of  
Securities Dealers, Inc.  
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33 Whitehall Street  
New York, New York 10004CASE SUMMARY

Claimants, MIM Color, Inc. & "MIM Color Products Retirement Trust" ("MIM") alleged that Respondent, Gary R. Feldman ("Feldman") was the account executive responsible for the trading activity in their account and that Respondent, Simon K. Schaffler ("Schaffler"), was the ERISA manager for Respondent, Bear Stearns, & Co., Inc. ("Bear Stearns"), during the period at issue. Claimants stated that Respondent, Feldman, recommended that Claimants purchase shares in Ambase Corporation and thereafter purchased 2,000 of Ambase Corporation Stock in August of 1989. Claimants stated that they subsequently discovered that the stock of the Ambase Corporation is not of the quality recommended for employee benefit plans and as was subsequently realized, was devastating to the financial integrity and stability of MIM's retirement Trust. Claimants contended that Respondents' conduct individually, jointly and severally was both negligent and reckless and breached their fiduciary obligations as well as their contractual obligations to Claimants and was fraudulent. Claimants also contended that Respondents, Bear Stearns and Schaffler were guilty of negligent supervision in their training and development of their brokers, specifically, Feldman.

Respondents denied that Feldman was responsible for the trading activity as alleged in the Statement of Claim or that the Ambase shares purchased in the account were recommended to the trustee or solicited by Feldman. Respondents denied that their conduct was negligent, reckless, in breach of any fiduciary or contractual obligations owed to Claimants or in any way fraudulent. Respondents further denied that Bear Stearns and Schaffler failed to adequately supervise, train or develop any of their employees, including but not limited to Gary R. Feldman. Respondents further made a Motion to Dismiss as to Respondent Schaffler on the grounds that the Statement of Claim failed to allege any act or omission on the part of Schaffler which would in any way give rise to liability on the part of Schaffler for the losses allegedly sustained by Claimants. Respondents maintained that the only role of Schaffler in the handling of the account of Claimants was to notify the Claimants that the purchase of the Ambase shares was not in accordance with Bear Stearns recommended guidelines for employee benefit plans.

RELIEF REQUESTED

Claimants requested: compensatory damages in the amount of \$27,249.94, punitive damages, interest, costs and counsel fees.

Respondents requested that the claims asserted in the Statement of Claim be dismissed in their entirety.

HEARD

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

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**AWARD-#90-02814**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

1. A motion to dismiss the action as against Simon K. Schaffler was granted at the hearing;
2. All Claims against Respondent, Bear Stearns, Inc. are dismissed;
3. Respondent, Gary R. Feldman is liable to the Claimants and shall pay to Claimants, MIM Color, Inc. and MIM Color Products Retirement Trust, the sum of One Thousand Nine Hundred Seventy Dollars And Thirty Six Cents (\$1,970.36) inclusive of interest;
4. The Parties shall each bear their respective costs including attorneys' fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$100.00 non-refundable filing fee previously deposited by Claimants and the following Forum Fees are assessed:

3 Sessions X \$300.00 = \$900.00.

Forum fees assessed against:

- 1- Claimants, in the amount of \$600.00; however, Claimants may use its \$300.00 hearing session deposit to offset part of this fee, thereby the amount due and owing equals \$300.00;
- 2- Respondent, Gary R. Feldman is assessed forum fees in the amount of \$300.00.

Fees are payable to the National Association of Securities Dealers, Inc.

**ARBITRATOR****CONCERNING ARBITRATOR'S SIGNATURE**

  
William A. DeLorenzo, Esq.  
(SOLE PUBLIC ARBITRATOR)