

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Barbara Barney

vs.

NASD #92-00239

Name of Respondents

Bear Stearns & Company  
Mitch Pindus  
Oppenheimer & Company

---

REPRESENTATION

For Claimant: Michael A. Bertz, Esq. of Los Angeles, California.

For Respondents' (Bear Stearn & Pindus): Anthony Pacheco, Esq., of McCambridge, Deixler, Marmaro & Goldberg, Los Angeles, California.

For Respondent's (Oppenheimer): Joseph C. Pichard, Esq. of New York, New York.

CASE INFORMATION

Statement of Claim filed: January 22, 1992

Claimant's Submission Agreement signed: January 8, 1992

Statement of Answer filed by Respondents on:

Bear Stearns and Pindus:	March 25, 1992
Oppenheimer and Pindus:	March 25, 1992

Respondents' Submission Agreements signed on:

Bear Stearns:	March 25, 1992
Mitch Pindus:	March 25, 1992

Oppenheimer did not file a submission agreement but appeared at the hearing and is subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Section 12 of the NASD Code of Arbitration Procedure.

### **HEARING INFORMATION**

Prehearing Conference(s) Date(s) Sessions: September 9, 1992 (one session)

Hearing Date/ Sessions:   November 4, 1992 (two sessions)  
                                  November 5, 1992 (two sessions)  
                                  November 6, 1992 (three sessions)  
                                  January 11, 1993 (two sessions)  
                                  January 13, 1993 (two sessions)  
                                  January 22, 1993 (three sessions)

Hearing Location: Los Angeles, California

### **CASE SUMMARY**

Claimant alleged: Fraud and Deceit against respondents Bear Stearns and Mitch Pindus (Pindus) Breach of Fiduciary Duty and Against all respondents due to purchases overly concentrated in unsuitable, non-investment-grade stocks, Australia denominated notes, low rated bonds and limited partnership units using non-replaceable proceeds of a trust and of an installment property sale; switches from on unsuitable investment to another investment of similar character, with the primary purpose being to obtain commission income for the respondents.

Respondents Bear Stearns and Pindus generally and specifically denied that they are obligated for any amount of money to claimant and asserted that the claims are without merit. Respondents alleged: Claimant advised them she was a "professional investor" and invested extensively in "second and third trust deeds" on single family residences in California. She stated that because of her high cost of living and inflation she needed to begin increasing her assets. Full disclosure was made to claimant about all her investments, all of which were authorized. Claimant was a sophisticated investor whose investments as a whole were diversified. Respondents alleged affirmative defenses of failure to state a legal or equitable claim, the bar of misrepresentation and ratification.

Respondents Oppenheimer and Pindus, in the Answer and Amended Answer, denied claimant's allegations and that they were ever "fiduciaries" or "trustees" in relation to claimant. Respondent alleged: claimant provided information reflecting an estimated net worth of \$850,000 and annual income of \$80,000, with objectives of fixed income, long-term growth and short-term trading. The sole purchase in claimant's account was suitable, the sale of First

Executive and Pan Am was claimant's decision to meet a margin call, and respondents had no connection with the Atari transaction. Claimant refused to liquidate the remaining Pam Am position. despite Pindus's urging. Respondents also alleged numerous affirmative defenses.

### **RELIEF REQUESTED**

#### **ON THE FIRST CLAIM:**

Jointly and severally against BEAR STEARNS and PINDUS:

1. Awarding damages of \$109,914.00, or according to the proofs; and
2. Awarding punitive and exemplary damages of at least \$200,000.00.

#### **ON THE SECOND CLAIM:**

Jointly and severally against BEAR STEARNS and PINDUS:

1. Awarding damages of \$109,914.00, or according to the proofs;

Against OPPENHEIMER, jointly and severally with BEAR STEARNS and PINDUS:

2. Awarding \$50,609.00 of the overall damages, or according to the proofs; and

Jointly and severally against BEAR STEARNS and PINDUS:

3. Awarding punitive and exemplary damages of at least \$200,000.00.

#### **ON ALL THE CLAIMS:**

1. Costs of this arbitration;
2. Interest on the damages awarded;
3. Such other and further relief as the arbitration panel may deem just and proper.

### **OTHER ISSUES CONSIDERED & DECIDED**

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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

### **AWARD**

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

1. Respondents Bear Stearns and Mitch Pindus are jointly and severally liable for and shall pay claimant the sum of \$35,000, to be apportioned as follows:
  - a) \$20,000 from Mitch Pindus;
  - b) \$15,000 from Bear Stearns;
2. All claims against Oppenheimer and Company are dismissed;
3. All claims for punitive damages are dismissed;
4. The parties shall each bear their respective costs including attorneys' fees.

### **OTHER COSTS**

None.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. shall retain the \$750 hearing session deposit previously deposited by the claimant. Forum fees assessed against:

1. Claimant for \$2,850;
2. Respondents Oppenheimer and Pindus, jointly and severally for \$7,200.

calculated as follows: Total forum fees of \$10,800 for one prehearing session at \$300 and 14 regular sessions times \$750/session. Claimant's one third share is reduced by \$750 already paid as a hearing deposit.

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

ARBITRATION PANEL

Name

Public/Industry

Public Arbitrator  
Public Arbitrator  
Industry Arbitrator

Signature

DATE SERVED: 03/12/93

Bernard Segelin  
Bernard Segelin, Esq.

Date of Decision: 3/13/93