

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Generoso Pope, III

92-00413

Name of Respondents

Bear Stearns & Company  
Sloate, Weisman, Murray & Co., Inc.

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**REPRESENTATION**

Claimant Generoso Pope, III ("Claimant") was represented by Jeffrey W. Herrmann, Esq. of the law firm of Cohn Lifland Pearlman Herman & Knoff.

Respondents Bear Stearns & Company, Inc. ("Bear Stearns") and Sloate, Weisman, Murray & Co., Inc. ("Sloate, Weisman") were represented by Philip S. Raible, Esq. of the law firm of Squadron, Ellenoff, Plesent & Lehrer.

**CASE INFORMATION**

Statement of Claim filed on: February 3, 1992.

Claimant's Submission Agreement signed on: January 29, 1992.

Joint Statement of Answer filed by Respondents Bear Stearns and Sloate Weisman ("collectively referred to as "Respondents") on: April 6, 1992.

Bear Stearn's Submission Agreement signed on: April 8, 1992.

Sloate Weisman's Submission Agreement signed on: April 3, 1992.

**HEARING INFORMATION**

Hearing Date/Sessions: May 18, 1993, two sessions.

Hearing Location: NASD Office, New York City, New York.

### CASE SUMMARY

Claimant alleged that he sold short 27,000 National Community Bank, Inc.'s common shares. Claimant alleged that through his agency, Steven A. Stone ("Stone"), he advised Sloate Weisman of his opposition to any covering purchase of the shares that had been sold short. Claimant alleged that Sloate Weisman represented that there was a strong possibility that Bear Stearns would buy in and that Sloate Weisman could not protest the buy in until Bear Stearns provided Sloate Weisman with official notification when official notification of a buy in buy 19,200 shares of National Community Bank was received. Stone communicated to Sloate Weisman that Claimant wanted to file a protest and that no shares be purchased for Claimant's account. Claimant alleged that he was informed by Sloate Weisman that the buy in could not be stopped and that 19,200 shares had been purchased for Claimant's account. Claimant alleged that the buy in was done in breach of the standard of care required by Respondents and that Respondents could not force Claimant to make the covering purchases so long as Respondents were fully secured. Claimant maintained, in the alternative, if the Respondents had any right to compel a buy in, prior to accomplishing such a purchase, Bear Stearns had to give timely not to Sloate Weisman. Claimant alleged that this breach constitutes negligence and that Claimant is entitled to recover.

Respondents denied any liability to Claimant and maintained that Claimant's account was properly handled by Respondents at all times. Respondents maintained that any liability that may have occurred was by Stone, Claimant's investment advisor. Respondents maintained that although the price of National Community Bank common shares increased, the losses suffered by Claimant were the result of Claimant realizing a loss he had already suffered through ordinary market action. Respondents admit that Stone opposed the buy-in, however, Respondents maintained that Stone's opposition had no bearing on the lender's right to commence a buy-in.

### RELIEF REQUESTED

Claimant requested damages in an amount between \$100,000 and \$150,000.

Respondents requested that the Statement of Claim be dismissed in its entirety and, if Claimant suffered any damages, he should seek recovery from Stone. In addition, Respondents requested that Claimant be assessed all forum fee costs.

### 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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimant's claim is denied in its entirety.
2. That each party shall bear their respective costs, including attorneys' fees, except for as specifically stated herein.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 Hearing Sessions x \$750 = \$1,500

Pursuant to Section 43(c) of the Code. The Panel has decided that the hearing session fees shall be assessed equally between the parties.

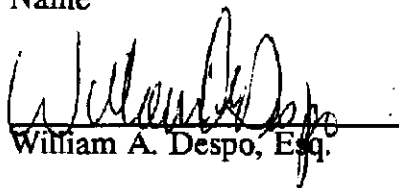
Claimant is assessed hearing session fees in the amount of \$750. Claimant is entitled to offset this amount with his hearing session deposit of \$750, so that no monies are due from the Claimant.

Respondents are jointly and severally assessed forum fees in the amount of \$750.

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

Concurring Arbitrator's Signature  
Name

Public/Industry

  
William A. Despo, Esq.

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Public Arbitrator

NASD DATE OF DECISION: July 12, 1993

**AWARD**

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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Claimant is assessed hearing session fees in the amount of \$750. Claimant is entitled to offset this amount with his hearing session deposit of \$750, so that no monies are due from the Claimant.

Respondents are jointly and severally assessed forum fees in the amount of \$750.

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

Concurring Arbitrator's Signature  
Name

Public/Industry

  
James H. Conley

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Industry Arbitrator

NASD DATE OF DECISION: July 12, 1993

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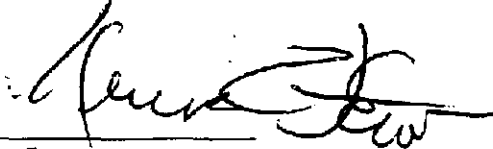
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Respondents are jointly and severally assessed forum fees in the amount of \$750.

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

Concurring Arbitrator's Signature  
Name

Public/Industry

  
Kenneth L. Stewart

PUBLIC  
Public Arbitrator

NASD DATE OF DECISION: July 12, 1993