

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Marilyn M. and Robert Clauss

92-03485

Name of Respondents

Bear Stearns & Company  
Brent Yarbrough

REPRESENTATION

For Claimants at the hearing: John D. Hudson, Esq. of Carney, Hudson, Williams, Blackburn & Grask, Des Moines, Iowa.

For Respondents at the hearing: William C. Mallery, Esq. of Bear Stearns & Company, New York, New York.

CASE INFORMATION

Statement of Claim filed: October 13, 1992. Claimant's Submission Agreement signed on: October 7, 1992.

Joint Statement of Answer filed by Respondents on: January 14, 1993. Respondent, Bear Stearns & Company, Inc.'s Submission Agreement signed on: January 12, 1993. Respondent, Brent Yarbrough's Submission Agreement signed on: January 15, 1993.

HEARING INFORMATION

Hearing Date/Sessions: June 23, 1993 for two (2) sessions.

Hearing Location: Omaha, Nebraska.

CASE SUMMARY

Claimants, Marilyn Clauss and Robert Clauss ("Claimants") alleged that they purchased shares of stock in Powell Industries, Inc. based on misrepresentations and omissions made by

Respondent Bear Stearns & Company, Inc. ("Bear Stearns") through its agent, Respondent Brent Yarbrough ("Yarbrough").

Respondents Bear Stearns and Yarbrough alleged that Yarbrough provided the Claimants with a well reasoned recommendation based on all publicly available information at the disposal of Yarbrough and Bear Stearns. Bear Stearns and Yarbrough further alleged that it was the Claimants' sole decision to purchase an additional 5,600 shares of the stock after its price had declined by approximately 25% and it was his decision alone to hold the stock as it declined rather than liquidating the position and holding the loss to approximately \$40,000.00.

#### **RELIEF REQUESTED**

Claimants requested damages in the sum of \$111,346.85.

Respondents requested that the Statement of Claim be dismissed and that the costs of the arbitration be assessed against the Claimants.

#### **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. The Statement of Claim is denied and dismissed in its entirety;
2. Each of the parties shall bear their own costs and expenses other than those specifically provided for under Forum Fees set forth below.

#### **FORUM FEES**

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

2 hearing sessions X \$750 = \$1500 minus hearing session deposit of \$750 = \$750 due plus another \$750 for the adjournment of the May 27, 1993 hearing = net \$1500 due.

Additional Forum fees Assessed By The Panel Against Claimants in the sum of \$750 for the adjournment fee and \$750 against Respondents Bear Stearns & Company, Inc. and Brent Yarbrough, jointly and severally, for the additional hearing session.

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

**By The Arbitration Panel:**

**Dated:**

1  
June 1, 1993

Thomas J. Tarsney, Esq.  
Thomas J. Tarsney, Esq.  
Public Arbitrator, Presiding

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Norman Veitzer  
Norman Veitzer  
Public Arbitrator

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Earl Madsen  
Earl Madsen  
Industry Arbitrator

Date Award Served By The NASD: \_\_\_\_\_

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**By The Arbitration Panel:**

**Dated:**

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1/2/93

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Thomas J. Tarsney, Esq.  
Public Arbitrator, Presiding

  
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Norman Veitzer  
Public Arbitrator

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Earl Madsen  
Industry Arbitrator

Date Award Served By The NASD: \_\_\_\_\_

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**By The Arbitration Panel:**

**Dated:**

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Thomas J. Tarsney, Esq.  
Public Arbitrator, Presiding

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Norman Veitzer  
Public Arbitrator

7/2/92

Earl Madsen  
Earl Madsen  
Industry Arbitrator

Date Award Served By The NASD: \_\_\_\_\_