

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Michel H. Yuspeh

vs.

Award
#92-04313

Name of Respondents

Bear Stearns & Company
Stratton Oakmont, Inc.
Paul J. Greco

REPRESENTATION

For Claimant, Michael Yuspeh ("Claimant"), Ralph A. Gant Esq., located in New York, New York.

For Respondent, Bear Stearns & Company ("Bear Stearns"), Franklin D. Ormsten, Esq. from the law firm of Ormsten & Evangelist located in Jericho, New York.

For Respondent, Stratton Oakmont, Inc. ("Stratton Oakmont"), Paul Greco ("Greco"), Harry Garman, Esq., from the law firm of Garman & Amdur, located in Rutherford, New Jersey.

CASE INFORMATION

Statement of Claim was filed on December 24, 1992.

Claimant's Submission Agreement was signed on November 19, 1992.

Joint Statement of Answer was filed by Bear Stearns, Stratton Oakmont and Greco on February 27, 1993.

Bear Stearns' Submission Agreement was signed on April 5, 1993.

Greco's Submission Agreement was signed on February 12, 1993.

Stratton Oakmont's Submission Agreement was signed on February 12, 1993.

HEARING INFORMATION

Pre-Hearing Conference: February 3, 1994 - 1 session

Hearing Date(s)/Sessions: October 7, 1993 - 2 sessions
December 21, 1993 - 2 sessions
January 12, 1994 - 2 sessions
February 7, 1994 - 2 sessions
April 11, 1994 - 2 sessions
April 12, 1994 - 2 sessions

Hearing Location: NASD offices. located in New York, New York.

CASE SUMMARY

Claimant alleges that Greco made a "cold" call to him and introduced himself as an investment banker employed by Stratton Oakmont which cleared through the large and well known firm of Bear Stearns.

Claimant alleges that he informed Greco that he was a retired widower who needed to preserve his capital to support himself and had a very limited investment experience in certificates of deposits and mutual funds. Claimant also alleges that as a result of Greco's smooth sales pitch, he invested in IBP which proved to be the only bona fide investment in the life of the pension accounts. Claimant contends that Greco called him at the hospital, where he was receiving treatment for a serious medical condition and was unable to think clearly, and caused him to send additional funds for investment in "penny stocks" such as DVI Financial, IPS Healthcare, ROPAK Laboratories, Licon International, Visual Equities, Health Care Services and SMT Health Services.

Claimant contends that he was impressed by the fact that no commission was being charged and that these stocks were ones that Stratton Oakmont and Bears Stearns made a market. Claimant further alleges that the account was churned, his written complaint dated August 18, 1991, was not responded to by Stratton Oakmont or Greco. Claimant alleges that he transfer his account to Shearson on or about June 19, 1992, the stocks were sold on June 19 and 23rd, 1993 and his out of pocket loss was \$73,426.77.

Claimant contends that that the trades were unsuitable, that Greco churned the account and made unauthorized trades, misrepresentation and committed fraud, that Bear Stearns & Stratton Oakmont failed to supervise Greco and that Respondents activities were in violation of the Securities Exchange Act of 1934, Sections (6) and 20(a).

Respondents deny all allegations of wrongdoing and deny liability. Respondents maintain that

all transactions were suitable, in that, Claimant was a fully mature and experienced businessman who has prior experience in the stock market, had an annual income in excess of \$75,000 per year, no dependents and a net worth of approximately one million dollars.

Respondents also maintain that all trades were discussed with and approved by Claimant and he received confirmations and other written communication concerning the transactions in his account. Respondents further maintain that most of the transactions in Claimant's account occurred after Claimant was discharged from the hospital. Respondents also state that the claim for churning is without merit. Respondents also contend that Claimant's request for punitive damages should be rejected as it has no basis in fact or law.

Bear Stearns contends that as the clearing broker, it bears no responsibility for any loss sustained by Claimant.

RELIEF REQUESTED

Claimant requested the following:

- I. Actual out of pocket monetary losses \$73,426.77.
- II. Interest at 8% starting May 10, 1991.
- III. Consequential damages - evidence shall be presented including but not limited to anxiety over losses, resulting depression etc.
- IV. Tax liabilities and losses - evidence to be provided.
- V. Attorney fees - evidence to be provided.
- VI. Arbitration costs
- VII. Exemplary Damages - (not to be confused with Punitive Damages) to serve as an example to others not to engage in or permit this type of flagrant abuse and fraud. The amount of such damages to be as determined by the Panel but it is submitted that they should not be less than \$50,000.
- VIII. PUNITIVE DAMAGES - the blatant conduct herein merits punishment. The amount of such damages to be determined by the panel but it is submitted that they should not be less than \$50,000.
- IX. DISCIPLINARY ENFORCEMENT - based on the evidence already documented as

augmented at the Hearing, the full record should be submitted to the Enforcement Division of the NASD, the SEC and other regulatory bodies for appropriate investigation and action, thus protecting the investing public from similar abuses.

X. FOR SUCH FURTHER RELIEF AS THIS PANEL MAY DEEM JUST AND PROPER.

Respondents request that the claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive conformed copies of the award while the original remain on file with the NASD.

Stratton Oakmont requested and obtained postponements of the hearings scheduled for December 21, 1993 and March 8, 1994. Postponement fees were assessed in accordance with Section 30 of the *Code of Arbitration Procedure*.

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) All claims against Bear Stearns are dismissed in their entirety.
- 2) Stratton Oakmont and Greco are hereby jointly and severally liable and shall pay Claimant **FORTY EIGHT THOUSAND SIX HUNDRED AND THIRTY TWO DOLLARS AND ZERO CENTS (\$48,632.00)**
- 3) The claim for attorney's fees is denied.
- 4) The claim for punitive damages is denied.
- 5) The claim for interest is denied.
- 6) All other claims for relief is denied.

FORUM FEES

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

Non-refundable Filing Fee: \$200.00

Hearing Session Fees: \$750.00 x 12 sessions = \$9,000.00

Pre-Hearing Conference Fees: \$300.00 x 1 session = \$300.00

Total = \$9,500.00

- 1) Claimant is assessed \$200.00. Claimant deposited \$950.00 and is entitled to a refund of \$750.00.
- 2) Stratton Oakmont and Greco are jointly and severally assessed \$9,300.00 in forum fees, which shall be satisfied by reimbursing Claimant \$750.00 and by remitting the balance, \$8,550.00, to the NASD.
- 3) Stratton Oakmont is assessed \$1,500.00 (\$750.00 for each postponement) for postponement of hearings scheduled December 20, 1993 and March 8, 1994.

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

ARBITRATION PANEL

Robert Seaman, Esq.	-	Public Chairperson
Julian Hess	-	Public Panelist
Seymour L. Lubliner	-	Industry Panelist

Concurring Arbitrator's Signature



Robert Seaman, Esq.

Date of Decision: May 26, 1994

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Seymour L. Lubliner	-	Industry Panelist

Concurring Arbitrator's Signature

Julian Hess
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Date of Decision: May 26, 1994

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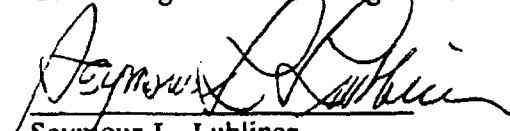
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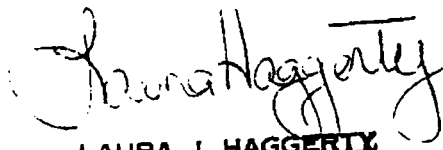

Seymour L. Lubliner

Date of Decision: May 26, 1994

(Cen. reg. C-1000 +)
STATE OF ~~NEW YORK~~
COUNTY OF ~~SAIT~~

S.S.:

On this 19th day of May, 1994, before me personally appeared Seymour L. Lubliner known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.


LAURA J. HAGGERTY
NOTARY PUBLIC
MY COMMISSION EXPIRES DEC. 31, 1995

STATE OF NEW YORK
COUNTY OF *New York*

S.S.:

On this *24* day of May, 1994, before me personally appeared Julian Hess known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Drivers License presented for ID
ID # *H05702-42171-801341-18*

Leon E. Liebshardt
LEON E. LIEBSHARDT
Notary Public, State of New York
No. 31-4677993
Qualified in New York County
Commission Expires November 24, 19*94*

Subscribed to and sworn to before
me this *24* day of *MAY* 19*94*

STATE OF NEW YORK
COUNTY OF NEW YORK

S.S.:

On this 10 day of ^{June}~~May~~, 1994, before me personally appeared Robert Seaman, Esq. known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Linda A. Ziering

LINDA A. ZIERING
Notary Public, State of New York
No. 31-4925427
Qualified in New York County
Certificate filed in New York County
Commission Expires April 4, 1996