

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimants

Casimir J. Dzialo  
Bernice J. Dzialo

No. 93-00340

Name of Respondents

Bear Stearns & Company, Inc.  
Ronald M. Berman

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REPRESENTATION OF PARTIES

For Claimants: Arne R. Rode, Esq., Chicago, Illinois.

For Respondent: William C. Mallory, Esq., Bear Stearns & Company, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: January 29, 1993.

Claimants' Submission Agreement signed: February 24, 1993.

Joint Statement of Answer filed by the Respondents on or about: April 2, 1993.

Respondent Bear Stearns & Company, Inc.'s Submission Agreement signed on: April 2, 1993.

Respondent Ronald M. Berman's Submission Agreement signed on: April 5, 1993.

HEARING INFORMATION

Hearing dates: September 22, 1993. Two (2) sessions.  
September 23, 1993. Two (2) sessions.

Hearing Location: Chicago, Illinois.

### CASE SUMMARY

Claimants, Casimir J. Dzialo and Bernice J. Dzialo ("Claimants") alleged: Breach of fiduciary duty, fraud; breach of written contract; and violation of Illinois Securities Law, Ill. Rev. Statutes, Chptr. 121 1/2, paragraph 137, Section 13.A by Respondents Bear Stearns & Company, Inc. and Ronald M. Berman ("Respondents. The allegations arose out of transactions involving Sears Roebuck & Company common stock and put options.

In their Answer, Respondents denied the allegations contained in the Statement of Claim. In addition, Respondents asserted the following affirmative defenses:

1. The claims are barred, in whole or in part, by the applicable statutes of limitation.
2. The claims are barred, in whole or in part, by the equitable doctrine of laches.
3. Claimants, by continuing to pursue the same investment strategies for four and one half years after the account suffered the majority of the losses in the market crash of October 1987, have waived any possible claims.
4. Claimants, by their actions and inactions, have ratified the complained of conduct and are barred from recovery.
5. Claimants, by their actions and inactions, have failed to mitigate any possible damages they may have incurred.
6. Any damages Claimant may have incurred are the result of Claimants' primary or contributory negligence.
7. By agreement between the parties, New York law governs the rights and liabilities of the parties. Under well settled New York law, neither punitive damages nor attorneys' fees are available as damages in award of this claim.

### RELIEF REQUESTED

Claimants requested the following:

- a. an award in their favor and against Respondents in the amount of \$131,050.00 for Claimants' out-of-pocket losses during the period the joint account was managed by Respondents;

- b. pre-award interest on the above sum;
- c. opportunity costs from joint account inception;
- d. punitive damages;
- e. costs and attorneys' fees for bringing the arbitration; and
- f. such other relief as the panel deems just and appropriate under the circumstances.

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

#### OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by counterpart copies or that a handwritten, signed Award maybe 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.

#### 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. Claimants, Casimir J. Dzialo's and Bernice J. Dzialo's Claims are hereby denied and dismissed with prejudice.

#### OTHER COSTS

Each party shall pay their own costs associated with this arbitration, including attorneys' fees, except as set forth more fully below.

#### FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

4 hearing sessions x \$750.00 = \$3,000.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$750.00 are assessed against

the Claimants.

Additional forum fees in the amount of \$1,500.00 are assessed jointly and severally against the Respondents.

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

**CONCURRING ARBITRATORS**

Dated:

Name:

September 28, 1993

/s/Charles B. Melby  
Charles B. Melby  
Presiding Chair  
Public Arbitrator

Date of Service by the NASD: 10-11-93