

N.A.S.D. AWARD

PUBLIC

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Stephen C. Perrone

93-00596

Bear Stearns & Company, Inc.  
Victoria R. Abrams

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**REPRESENTATION**

For Claimant: Brian J. Isaac, Esq. of the law firm of Pollack Pollack Isaac & DeCicco.

For Respondents: William C. Mallery, Esq.

**CASE INFORMATION**

Statement of Claim filed: February 17, 1993. Reply to Counterclaim filed on June 18, 1993. Reply to the Response to the the Reply of the Counterclaim filed on July 26, 1993.

Claimant's Submission Agreement signed on: February 26, 1993.

Joint Statement of Answer filed by Respondents on April-27, 1993.

Respondent, Bear Stearns & Company, Inc.'s Submission Agreement signed on April 28, 1993.

Respondent, Victoria Abrams' Submission Agreement signed on April 28, 1993.

Respondents Response to Reply to Counterclaim filed on June 28, 1993.

### HEARING INFORMATION

Hearing Dates/Sessions: February 14, 1994 - one session  
February 08, 1994 - two sessions

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

### CASE SUMMARY

Claimant, alleged that Respondents made misrepresentations to the Claimant and led Claimant to believe they had information that would essentially guarantee a short term profit if he purchased shares of stock of Snapple Beverage Corp. Claimant further alleged he did not authorize the Respondents to purchase the stock at a price in excess of \$31.00 per share and Respondent Bear Stearns & Company, Inc.'s statement that the trade was "unsolicited" is a misstatement of the truth. Claimant further alleged the Respondents mismanaged his account and breached the fiduciary duty owed to the Claimant.

Respondents maintained it was the Claimant's suggestion to purchase more stock than was suggested by the Respondents and at no time did the Respondent Victoria Abrams ever "guarantee" that the stock would go up and Respondent Victoria Abrams provided Claimant with her good faith opinion that the stock had appreciation potential. Respondents further maintained the Claimant specifically authorized the transaction at issue and Claimant discussed the transaction with Ms. Abrams and was fully aware of the risks of the investment and agreed to make payment for the purchase in full and the claim is barred by the doctrine of accord and satisfaction.

Respondents asserted a counterclaim alleging that in reaching a resolution of the complaint raised by Claimant, Bear Stearns & Company, Inc. agreed to and did reverse all commissions on the transactions; Bear Stearns & Company, Inc. has fulfilled its obligation; however, Claimant has reneged on his end of the bargain by filing the instant Statement of Claim. Accordingly, Respondents alleged the Claimant is indebted to Bear Stearns & Company, Inc. in the amount \$6,231.49 the amount of commissions reversed in his account.

In response to the counterclaim Claimant maintained that the Respondents are not entitled to a commission on the trades since Respondents' recommendation of the Snapple stock violated their fiduciary duties to the Claimant and required him to sell previous stock that he had purchased for long term investment to cover the shortfall.

**RELIEF REQUESTED**

Claimant requested damages of \$40,000 and a dismissal of the counterclaim.

Respondents requested that the Statement of Claim be dismissed, that the costs of the proceeding be assessed against Claimant and that Bear Stearns & Company, Inc. be awarded the amount of \$6,231.49, plus interest on its counterclaim as well as such other and further relief as the Panel may deem appropriate.

**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 Respondent Bear Stearns & Co. Inc. be and hereby is liable and shall pay to the Claimant the sum of \$17,000.00 interest specifically excluded.
2. The panel ruled that the Respondent Victoria Abrams had communicated inaccurate information to the trading department but under the facts and circumstances present in the case they do not assess liability against her.
3. Each party shall bear their respective costs including attorneys fees.

**FORUM FEES**

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

3 sessions x \$400 = \$1200.00 minus Claimant's hearing session deposit of 500.00 less Respondent's hearing session deposit of 400.00 = net \$300 due.

The Respondent Bear Stearns & Company, Inc. be and hereby is liable and shall pay to the NASD the sum of \$300.00 representing the balance of the Forum Fees.

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

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 24<sup>th</sup> day of February, 1994, before me personally appeared Henry McCoy, II known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

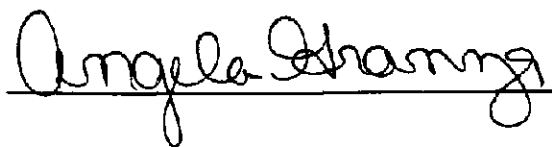
Arlene Tropp

ARLENE TROPP  
Notary Public, State of New York  
No. 60-4827957  
Qualified in Westchester County  
Commission Expires June 30, 1994

STATE OF: ~~New York~~ New Jersey  
COUNTY OF: ~~New York~~ Monmouth

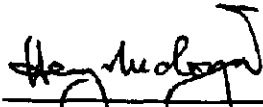
S.S.:

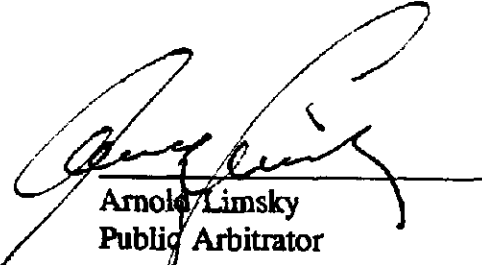
On this 5<sup>th</sup> day of March, 1994, before me personally appeared Arnold Linsky known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

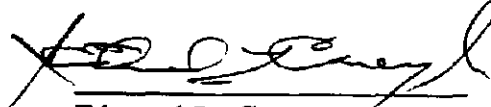
A handwritten signature in cursive script, reading "Angela Granza", is written over a horizontal line.

ANGELA GRANZA  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires October 22, 1995

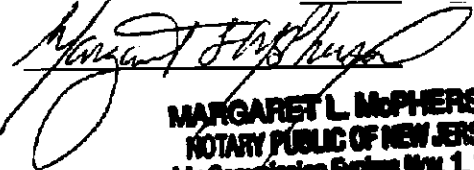
ARBITRATORS SIGNATURE

  
Henry McCoy, II, Esq.  
Public Arbitrator

  
Arnold Linsky  
Public Arbitrator

  
Edmund L. Carey, Jr.  
Industry Arbitrator

Before me on this 9th day of March 1994

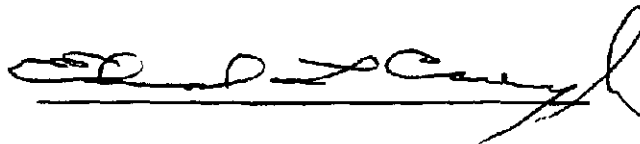
  
**MARGARET L. McPHERSON**  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Nov. 1, 1994

Date of Decision: March 18, 1994

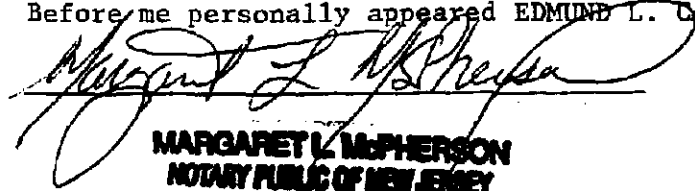
STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 24 day of March, 1994, before me personally appeared Edmund L. Carey, Jr. known and 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.



Before me personally appeared EDMUND L. CAREY



**MARGARET L. McPHERSON**  
**NOTARY PUBLIC OF NEW JERSEY**  
**My Commission Expires Nov 1, 1994**