

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

C.J. St.Germain & James St.Germain

93-00663

Name of Respondents

Prudential Securities, Inc.  
Bear Stearns & Company  
Frederick Stone

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 23, 1993, Claimants C.J. St. Germain & James St. Germain, who appeared by and through their attorney David M. Platt, Esq. of Farhat, Story & Kraus, P.C., East Lansing, MI, alleged that Respondents Prudential Securities, Inc., Bear Stearns & Co., Inc. and Frederick Stone did not inquire of Claimants as to their actual income and net worth, and knew or should have known of Claimants' actual net worth. The Claimants contended that the Report of Client, which was completed by Respondent Frederick Stone incorrectly, indicated that Claimants had an approximate annual income of \$80,000.00 and an approximate net worth of \$200,000.00., but that Claimants' actual income was approximately \$12,000.00 and net worth was \$100,000.00. Claimants further alleged that the Report of New Accounts states that the account would be trading as a cash account but Respondent Stone incorrectly engaged Claimants' account in margin trading and that Respondent Prudential Securities, Inc. engaged Claimants' account in margin trading without authorization and that all margin account trades were unauthorized. The Claimants contended that they were not aware that margin trading was taking place in their account until July 1992 when they received a margin call, and that they should be compensated for the losses they have suffered due to the wrongdoing of the Respondents.

Respondents Bear Stearns & Co., Inc., through its in-house counsel, William C. Mallery, Esq., maintained that Claimant stated his annual income of approximately \$80,000.00 and a net worth of approximately \$200,000.00 when Claimant opened his account in mid July of 1991. Respondent Bear Stearns & Co., Inc. also maintained that a copy of the new account form was sent to the Claimants and the Claimants did not change the information. The Respondent further

maintained that in September of 1991 the Claimants executed a margin agreement. Respondent Bear Stearns & Co., Inc. further maintained that Claimants received a Truth-In-Lending Statement which explained the mechanics and cost of margin trading.

Respondents Prudential Securities, Inc. and Frederick Stone, through their in-house counsel, Mark L. Seffinger, Esq., maintained that it did not intentionally or even negligently purchase or sell any stock within the Claimants' account without the expressed or implied authorization of Claimants. Respondents Prudential Securities, Inc. and Frederick Stone further maintained that they managed Claimants' account in good faith. Respondents Prudential Securities, Inc. and Frederick Stone further maintained that Claimants fully understood and authorized all trading in their account, whether in cash or on margin.

#### **RELIEF REQUESTED**

Claimants C.J. St. Germain and James St. Germain requested \$10,000 in actual damages, plus costs.

Respondent Bear Stearns & Co., Inc. requested that the claims of the Claimants be dismissed.

Respondents Prudential Securities, Inc. and Frederick Stone requested that the claims of the Claimants be dismissed.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Carole M. Crosby, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on February 12, 1993 and by the Respondents on May 3, 1993 and April 28, 1993.

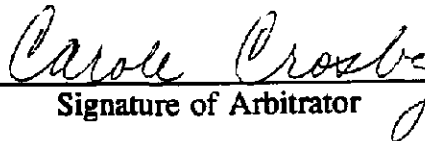
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants C.J. St. Germain and James St. Germain against Respondents Bear Stearns & Co., Inc., Prudential Securities, Inc. and Frederick Stone are dismissed in their entirety.
2. The parties shall bear their respective costs.

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondents Bear Stearns & Co., Inc. and Prudential Securities, Inc. are jointly and severally liable and shall pay to the Claimants C.J. St. Germain and James St. Germain the sum of \$150.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, **CAROLE M. CROSBY, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

DATE OF DECISION: April 29, 1994