

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimants

Lee L. Bernardis
Barbara Bernardis

vs.

Case # 93-01414

Name of Respondents

Bear Sterns & Co., Inc.
Daniel Jones
John Pearce

REPRESENTATION

For Claimants Lee L. Bernardis and Barbara Bernardis ("Claimants"), Jeffrey A. Sellers Esq., from the law firm of Silverberg, Yood, Sellers & McGorry.

For Respondents Bear Sterns & Co., Inc. ("Bear Sterns") and Daniel Jones ("Jones"), William C. Mallery, Esq., in-house counsel of Bear Sterns.

For Respondent John Pearce ("Pearce "), Michael O. Morse, Esq.

CASE INFORMATION

Statement of Claim filed on April 5, 1993

Claimants' Submission Agreement was signed on March 30, 1993.

Reply to Motion to Dismiss filed on

Joint Statement of Answer filed by Bear Sterns and Daniel Jones on June 3, 1993.

Bear Sterns' Submission Agreement signed on May 13, 1993.

Daniel Jones' Submission Agreement signed on May 13, 1993.

John Pearce's Statement of Answer filed on June 22, 1993.

John Pearce's Submission Agreement signed on

John Pearce's Motion to Dismiss filed on

HEARING INFORMATION

Hearing Dates/Sessions: December 10, 1993 - 2 sessions

Hearing Location: Hyatt Regency- Buffalo, New York.

CASE SUMMARY

Claimants alleged that they received a phone call and were persuaded to open an account with a registered representative whose name cannot now be recalled, with Brodius Securities.

Claimant alleged that this broker, upon Brodius ceasing to exist, became associated with Michelin & Company and transferred the Claimants' accounts with him. Claimants alleged that they received a telephone call from Pearce who represented himself to them as being the successor to their former broker at Michelin and who had been assigned to handle their account; due to their prior broker having left the industry. Claimants alleged that their purpose in investing was to achieve long-term growth in safe and secure investments and to invest in IRA's to save taxes and attain growth and appreciation of their assets so that they would have sufficient assets upon their retirement to supplement their anticipated pensions. Claimants alleged that they advised Pearce that they had no knowledge as to investing in the stock market and were totally unsophisticated in such investments and would be relying totally upon him to recommend to them and obtain for them safe and secure investments which would entail minimal risk. Claimants alleged they were assured by Pearce that all investments made were being made in safe and secure stocks. Claimants alleged that Pearce left Michelin & Company and become associated with J.W. Gant. Claimants alleged that they received a statement from J.W. Gant indicating that their account executive was John Demeo as opposed to Pearce. Claimants alleged that they were unaware that Mr. Pearce had severed his relationship with J.W. Gant and no further communication was heard from Pearce. Claimants alleged certain IRA accounts opened by Pearce were transferred to Bear Sterns upon Michelin's ceasing to exist. Claimants alleged that their IRA's were assigned to Jones. Claimants alleged that Bear Sterns and Jones conducted themselves in an inappropriate manner and failed to exercise that degree of care and responsibility due to and owing to the Claimants. Claimants alleged that Bear Sterns and Jones treated their account with total and complete neglect, and acting in a negligent manner, did cause and allow the Claimants to suffer unnecessary and unwarranted losses. In addition to other losses, Claimants alleged that due to Pearce's investment decisions, their account declined significantly in value: specifically, from approximately \$6,000.00 to \$155.00. Claimants alleged that the value of their IRA declined from \$6,527.00 to \$753.00.

Respondents Bear Sterns and Jones maintained that Claimants opened their IRA through the courtesy of Michelin Securities Corp, an independent broker/dealer for whom Bear Sterns performed ministerial clearing services. Respondents maintained that pursuant to an agreement with Micheline, Michelin was solely responsible for the conduct of the accounts and ensuring that the transactions conducted therein were in accordance with the applicable rules. Respondents maintained that when Claimants open their account at Micheline & Co., Bear Sterns automatically sent Claimants a letter outlining the division of responsibility between Micheline and Bear Sterns. Respondents alleged that Jones contacted Claimants to inform them that he would be available to assist them if they so needed. Respondents alleged that Jones advised Claimants that he was not familiar with the stocks in their accounts as those stocks were not followed by either him nor Bear Sterns. Respondents maintained that claimants acknowledged that the securities in the accounts were speculative and acknowledged that it would be their decision whether to hold or sell them. Respondents maintained that after this discussion, Claimant chose to take no action and held onto the positions already in the account.

Respondent Pearce denied each and every allegation contained in Statement of Claim. Pearce maintained that after having a full and fair opportunity to evaluate the performance of any recommendations of Pearce, the Claimants continued to make similar investments on a periodic basis, thus ratifying the strategies recommended by Pearce. Pearce maintained that the claims are barred by the NASD Code of Arbitration Procedure, the claims are barred by applicable statutes of limitations, that the Claimant knew or should have known the risks, that the Claimants caused their own losses and that the Claimants' losses arose from the actions of persons other than Pearce as well as market forces.

RELIEF REQUESTED

Claimants requested:

- A. Barbara Barnardis and Lee L. Barnardis as Joint Tenants against John Pearce in the amount of \$38,544.00, plus interest;
- B. Barbara Barnardis, individually, against John Pearce in the amount of \$6,000.00 - \$4,709.00 or \$1291.00;
- C. Barbara Barnardis in relation to her IRA account against John Pearce in the amount of \$5,774.00;
- D. Barbara Barnardis in relation to her IRA account against Bear Sterns & Company, Inc. and Daniel Jones, jointly and severally, in the amount of \$852.00;
- E. Lee Barnardis against John Pierce as to the IRA account maintained at J.W. Gant in the amount of \$9,533.00, plus interest;
- F. Lee Barnardis in relation to his IRA account against Bear Sterns & Company, Inc. and Daniel Jones, jointly and severely, in the amount of \$2,390.00;
- G. Together with the costs and disbursements of this action; and such further and different relief as the arbitrators deem just, proper and appropriate in the circumstances.

Respondent Bear Sterns requests that the Statement of Claim be dismissed and the costs of this proceeding be assessed against Claimants.

Respondent Pearce respectfully requests that the arbitrators dismiss the claims against him in

their entirety. Pearce further asks that the arbitrators award to him all of the costs and expenses incurred by him in defending this matter, including reasonable attorneys fees.

OTHER ISSUES CONSIDERED & DECIDED

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

The panel recommended that John Pearce be investigated by the NASD for possible disciplinary action.

Pearce filed a Motion to Dismiss the part of the claim involving the Claimants' IRA based on Section 15 of the Code of Arbitration Procedure. Pearce's motion was deemed by the Director of Arbitration to be substantive in nature and was forwarded to the full panel for consideration and resolution.

The parties agreed on record to proceed with this arbitration with two arbitrators panel members.

AWARD

After considering the pleading, 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. Pearce shall pay Claimants Barbara Barnardis and Lee Barnardis as Joint Tenants the sum of \$38,544.00.
2. Pearce shall pay Barbara Barnardis, individually the sum of \$1,291.00
3. Pearce shall pay Barbara in relation to her IRA the sum of \$5,774.00.
4. Pearce shall pay Lee Barnardis in relation to his IRA \$9,533.00
5. Pearce shall pay Barbara Barnardis and Lee Barnardis the sum of \$29,858 in interest.
(Pearce shall pay Barbara and Lee Barnardis a total of \$85,000)
6. Each party shall bear the costs of her or his attorneys' fees.

Each party shall bear 1/3 (one-third) the costs of this arbitration: Claimants 1/3, Respondents Bear Sterns and Jones, Jointly and severally 1/3; and Respondent Pearce 1/3.

FORUM FEES

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

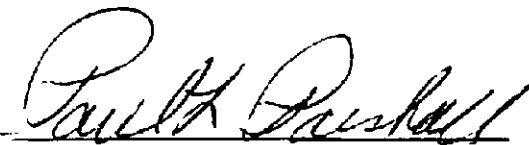
Non-refundable filing fee:	\$150.00
Hearing session fees: \$500 x 2 =	\$1,000.00
TOTAL:	\$1,150.00

1. Claimants shall pay the NASD the sum of \$383.33 to be offset by the \$650.00 deposit already paid to the NASD. The Claimant shall receive a \$266.67 reimbursement from Bear Sterns and Daniel Jones.
2. Respondents Bear Sterns and Daniel Jones shall jointly and severally pay the NASD the sum of \$383.33. Respondents Bear Sterns and Jones shall satisfy this amount by reimbursing Claimant \$266.26 and paying the balance of \$116.66.
3. Respondent John Pearce shall pay the NASD The sum of \$383.33.

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

CONCURRING ARBITRATOR'S SIGNATURE

Public/Industry


Paul L. Parshall

Public Arbitrator

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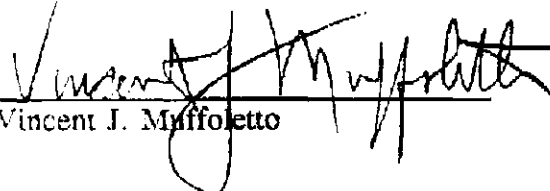
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Public/Industry



Vincent J. Maffioletto

Public Arbitrator