

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Beverly Mitchell, Trustee, on behalf of
the Lebowitz Family Trust and
Beverly Mitchell, Trustee, on behalf of
the NW/RC Charitable Remainder Trust

94-00134

Names of Respondents

Bear, Stearns & Company, Inc. and
Billy Solomon

REPRESENTATION

Claimant, Beverly Mitchell, as trustee on behalf of the Lebowitz Family Trust and the NW/RC Charitable Remainder Trust was represented by W. W. Mitchell, II, Esq. of Mitchell & Mark, Dallas, Texas.

Respondents, Bear, Stearns & Co., Inc. and Billy Solomon were represented by Cheryl Jerome Moore, Esq. and Stephen T. Johnson, Esq. of Mankoff, Hill, Held & Metzger, Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on January 4, 1994.

An Amended Statement of Claim was filed with the NASD on November 14, 1994.

Claimant's Submission Agreement was signed by Beverly L. Mitchell as trustee on behalf of the Lebowitz Family Trust and the NW/RC Charitable Remainder Trust on February 14, 1994.

A Joint Statement of Answer was filed with the NASD on April 13, 1994.

Respondent, Bear, Stearns & Co., Inc.'s Submission Agreement was signed on April 12, 1994 by Mark E. Lehman, Senior Managing Director for Bear, Stearns & Co., Inc.

Respondent, Billy Solomon did not file an executed Submission Agreement with the NASD.

HEARING INFORMATION

Pre-hearing conferences were held on:

September 9, 1994 for one (1) session and
March 21, 1995 for one (1) session.

The hearing was held on:

July 26, 1995 for two (2) hearing sessions; and,
July 27, 1995 for three (3) hearing sessions.

The hearing location was Dallas, Texas.

CASE SUMMARY

Claimant, Beverly L. Mitchell as trustee for the Lebowitz Family Trust and Charitable Remainder Trust ("Mitchell") alleged that Respondents, Bear, Stearns, & Co., Inc. ("Bear Stearns") and Billy Solomon ("Solomon") contacted Mr. Louis H. Lebowitz ("Lebowitz"), a representative of the trust accounts at issue in this matter to consider investing monies held in the trusts with Bear, Stearns and Solomon. Mitchell in her capacity as the trustee and Lebowitz both expressed concern that it was imperative that the primary focus of any investments made on behalf of the trusts be preservation of capital and that any investment risks needed to be minimal. Mitchell, in her capacity as trustee on behalf of the Lebowitz Family Trust and NW/RC Charitable Remainder Trust ("Trusts") invested certain sums with Solomon and gave Solomon discretionary trading power within certain parameters set to preserve the principal of the trusts.

Mitchell alleged that Bear, Stearns and Solomon breached the agreements by exceeding the parameters by which it and he agreed to abide at least as follows:

1. exposing more than 25% of the principal in each Trust;
2. investing in stocks which were not of a type suitable for investment by Trust accounts;
3. making investment decisions not based upon solid analysis and recommendations

from Bear, Stearns, but instead on hype and hearsay;

4. failing to implement stop loss orders on any of the Trusts' positions; and,
5. misrepresenting the status of the accounts and charging commissions other than that which were agreed upon.

Specifically, Mitchell alleged that purchases of stock in AST Research, Inc., Convex Computer Corp., Halwood Group, Inc., Immunomedics, Inc., Phoenix Laser Systems, Inc., and U.S. Bioscience Inc. were unsuitable for the Trusts. Mitchell further alleged that Solomon made false representations in an attempt to sell Mitchell unregistered securities in the form of an interest in L'Argent Inc. d/b/a John Robert Powers.

Bear, Stearns and Solomon alleged that the style and nature of his and its investments of the Trusts' accounts were directed by the investment decisions of Lebowitz and Mitchell. Bear, Stearns and Solomon further alleged that it was the aggressive investment style of Lebowitz which at first resulted in profits to the Trusts and eventually lead to losses. Bear, Stearns and Solomon also stated that because Lebowitz was authorized to invest by Mitchell as trustee, should there be an award in favor of the Trusts, the Trusts should be indemnified by the trustee rather than by Respondents. As an affirmative defense to the Trust's allegations, Bear, Stearns and Solomon stated that by failing to object to any investments of the trust accounts, Mitchell ratified such activities and waived the right to bring a claim against Bear, Stearns and Solomon.

RELIEF REQUESTED

Mitchell as trustee on behalf of the Lebowitz Family Trust requested an award of \$79,305.25 for the unauthorized sellout by Bear, Stearns and \$6,642.17 for commission overcharges. Mitchell as trustee on behalf of the NW/RC Charitable Remainder Trust requested an award of \$87,117.10 for the unauthorized sellout by Bear, Stearns and \$16,117.43 for commission overcharges. Mitchell as trustee on behalf of both Trusts requested punitive damages, attorneys fees, and costs.

Bear, Stearns and Solomon requested that all claims be dismissed and that Respondents be awarded costs, fees and legal expenses incurred. Bear, Stearns and Solomon also requested that it and he should be indemnified by the trustee, should the panel grant an award to the Trusts.

OTHER ISSUES CONSIDERED & DECIDED

Despite the fact that Solomon failed to file an executed Submission Agreement with the NASD, he was required to submit to the jurisdiction of the forum pursuant to Section 12 of the

NASD Code of Arbitration Procedure ("the NASD Code"). Having answered, appeared and testified at the hearing, the arbitration panel finds that Solomon is bound by the determination of the panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

After considering the pleading, 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. Bear, Stearns is liable for and shall pay to Mitchell as trustee on behalf of the trusts, the sum of Fifty Thousand Dollars and No Cents (\$50,000.00);
2. The claim asserted against Solomon is denied and dismissed in its entirety and all other claims for relief which are not specifically addressed herein are denied and dismissed in their entirety; and,
3. Other than Forum Fees which are set forth below, each of the parties shall bear their own costs, expenses and attorney's fees.

FORUM FEES

Pursuant to Section 43c of the NASD Code of Arbitration Procedure, forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference. There were two (2) pre-hearing sessions for a total of \$600.00. There were five (5) hearing sessions for a total of \$3,750.00. Accordingly, the total Forum Fees due to the NASD are \$4,350.00.

The NASD shall retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit previously paid to the NASD by Claimant. Additional Forum Fees in the amount of \$1425.00 are assessed to the Claimant and additional Forum Fees in the amount of \$2175.00 are assessed to Bear, Stearns.

Additional Forum Fees assessed to the parties are payable to the National Association of

Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

/s/ Marc A. Myrin
Marc A. Myrin, Esq.
Presiding Chairperson
Public Arbitrator

August 30, 1995
Dated

/s/ Daniel A. Kile
Daniel A. Kile, Esq.
Panelist
Public Arbitrator

August 30, 1995
Dated

/s/ John Greer
John Greer
Panelist
Industry Arbitrator

August 31, 1995
Dated

For NASD Use Only

Date Award Served on the Parties by the NASD: September 1, 1995