

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Aniello and Violet Ruggieri
Carrie Ruggieri

vs.

Case #
94-00267

Name of Respondents

Bear Stearns & Company
Lew Lieberbaum & Co., Inc.
Mark Perosi

REPRESENTATION

For Claimants, Aniello, Violet and Carrie Ruggieri ("Claimants"), William J. Conley, Jr., Esq., from the law firm of Pass, Caruolo & Conley, located in Providence, Rhode Island.

For Respondents, Bear Stearns & Company ("Bear Stearns"), Jay Marc Israel, Esq., from Lew Lieberbaum & Co., Inc., located in Garden City, New York.

For Respondent, Lew Lieberbaum & Co., Inc., ("LLC"), Leonard A. Newhaus, C.P.A. and Jay Marc Israel, Esq., from Lew Lieberman & Co., Inc. located in Garden City, New York.

Respondent, Mark Perosi, ("Perosi"), was not represented by counsel and did not attend the hearing.

CASE INFORMATION

Statement of Claim was filed on January 21, 1994.
Claimants Submission Agreement was signed on January 12, 1994.

Statement of Answer was filed by Respondent Bear Stearns on March 21, 1994.
Bear Stearns Submission Agreement was signed on February 28, 1994.

Statement of Answer was filed by Respondent, LLC March 21, 1994.
LLC's Submission Agreement was signed on March 21, 1994.

Statement of Answer was filed by Perosi on March 21, 1994.
Perosi's Submission Agreement was signed on March 21, 1994.

HEARING INFORMATION

Hearing Date/Sessions: December 2, 1994 - 1 session

Hearing Location: NASD offices located in Boston, Massachusetts.

CASE SUMMARY

Claimants allege that Perosi was an agent for LLC and that Bear Stearns was LLC's clearing agent. Claimants allege that Perosi brought units in Technology Research Corporation instead of shares of stock, which units had to be sold on expiration, resulting in losses to the Claimants. Claimants also allege that Perosi quoted the price of JMAR Industries Securities as \$5.50 but instead brought these securities at \$6.50. Claimants maintain that Perosi engaged in unauthorized trades in JMAR Industries and Conquest Airlines Securities. Claimants further allege that on the strong recommendation of Perosi, they purchased securities in Care Concepts in order to comply with the tax guidelines for gifts to children. Claimants now maintain that they suffered substantial losses on this investment.

Respondent Bear Stearns denies liability and alleges that it only performed operational and clearing functions for LLC and had no personal contact or dealing with the Claimants.

Respondent LLC alleges that the transactions engaged in by Perosi were fully authorized by the Claimants and that no complaint was ever made to the Compliance Department or the offices of LLC regarding any transactions being in dispute. Respondent LLC asserts five affirmative defenses.

Respondent Perosi denies the allegations of wrongdoing and alleges that Claimant, Mr. Ruggieri, placed an order to buy Technology Research Corporation and that JMAR Industries Securities was also purchased without any complaints regarding any transactions. Furthermore, Perosi maintains that nothing was said by this Claimant about any tax guidelines for gifts to children.

RELIEF REQUESTED

Claimants request an award of \$70,000.

Respondents Bear Stearns and LLC request the claim be dismissed and costs be assessed against the Claimants. Respondent LLC also requests an award of attorney's fees and such other relief as the panel deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies and agreed to receive conformed copies of the Award while the original remains on file with the NASD.

Respondent Perosi did not attend the hearing. According to the NASD staff, Perosi contacted the NASD on May 31, 1994 and indicated that his finances made it difficult for him to appear at the hearing scheduled for December 2, 1994. The NASD staff informed him that he could rely on his answer, request that he be allowed to testify by telephone and that if he failed to participate in the hearing, an award could be rendered against him. Respondent Perosi contacted the NASD again on December 1, 1994 concerning his inability to attend the hearing, and the NASD staff repeated his choices as given on May 31, 1994. By letter dated December 1, 1994, Perosi requested an adjournment of the December 2, 1994 hearing because his financial condition made it difficult for him to go to Boston and also requested that he be allowed to testify by telephone. The panel considered and denied this request after hearing arguments from Claimants and the other Respondents--all of whom opposed allowing Perosi to testify by telephone. The NASD staff communicated the panel's decision to Perosi.

Pursuant to Sections 25, 28, and 29 of the *Code of Arbitration Procedure* ("Code"), the panel proceeded with the hearing in his absence.

At the hearing, the parties indicated that Claimants had resolved their dispute with Bear Stearns.

AWARD

After considering the pleadings, 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. The Panel finds for the Claimants in the amount of **TWENTY THOUSAND DOLLARS AND ZERO CENTS (\$20,000.00)** to be assessed jointly and severally against LLC and Perosi.
2. Respondent LLC's request for attorney's fees is denied.
3. All other claims for relief are denied.
4. Forum Fees are equally assessed between the parties as described hereafter.

FORUM FEES

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

Non-refundable Filing Fee: \$150.00

Hearing Session Fees: \$500.00 (1 session x \$500.00 per hearing session)

Total fees: \$650.00

1. Claimants are assessed a \$150.00 non-refundable filing fee.
2. Claimants are further assessed \$166.66. Claimants paid \$650.00 and are entitled to a refund of \$333.34.
3. LLC is assessed \$166.67 in forum fees and shall satisfy the fees assessed by reimbursing Claimants \$166.67.
4. Perosi is assessed \$166.66 and shall satisfy the fees assessed by reimbursing Claimants \$166.66.

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

ARBITRATION PANEL

S. Lawrence Gwin, Jr., Esq.	-	Public Chairperson
W. Lawrence McNeil	-	Public Panelist
Linda A. Gelfand	-	Industry Panelist

Concurring Arbitrator's Signature


Linda A. Gelfand

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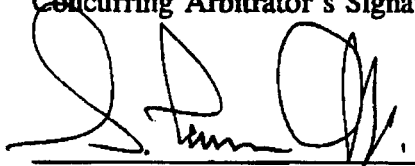
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Linda A. Gelfand	-	Industry Panelist

Concurring Arbitrator's Signature



S. Lawrence Gwin, Jr., Esq.

Date of Decision: January 11, 1995

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Linda A. Gelfand	-	Industry Panelist

Concurring Arbitrator's Signature


W. Lawrence McNeil

Date of Decision: January 11, 1995

STATE OF NY ss.:

COUNTY OF NY

On this 2 day of June 1995, before me personally appeared Francis Sculley to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Deborah A. DeJesus

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996