

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Peter G. Russo

94-00897

Name of Respondent

Bear Stearns & Company

REPRESENTATION

For Claimant Peter G. Russo ("Claimant") appeared Charles F. Brennan, Esq., a sole practitioner located in Garden City, New York.

For Respondent Bear Stearns & Company ("Respondent") appeared Daniel S. Taub, Esq. of Bear Stearns & Company.

CASE INFORMATION

Statement of Claim filed: March 1, 1994.

Claimant's Submission Agreement signed on: May 2, 1994.

Statement of Answer filed by Respondent: August 29, 1994.

Respondent did not file a properly notarized Submission Agreement.

HEARING INFORMATION

Hearing Date(s)/Session(s): June 14, 1995 - One Session

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that, in August 1993, Respondent initiated an internal investigation of trading irregularities on its Government Trading desk and that the target of the investigation was

Claimant's supervisor. Claimant further alleged that, while he was being interviewed in connection with the investigation, he denied knowing any relevant facts concerning his supervisor's conduct, but did admit that he improperly marked a small trade on or about May 1, 1993.

Claimant alleged that he was advised, on August 26, 1993, not to report to work until further notice, but that he was never informed that he was being suspended without pay. Claimant further alleged that he was asked to take a polygraph examination to verify his denial of any involvement with his supervisor and that he retained an attorney to assist him in connection with the examination. Claimant maintained that he took the polygraph examination on September 3, 1993 and that he answered all questions truthfully. Further, Claimant asserted that, on September 20, 1993, Respondent notified his attorney that he would not be allowed to return to his employment with Respondent. Claimant maintained that, at Respondent's request, he sent Respondent a letter of resignation dated September 30, 1993.

Claimant alleged that, on August 26, 1993 until October 6, 1993, Respondent's payroll department deposited his paycheck into his bank account on a biweekly basis. Claimant alleged that, in October, 1993, Respondent attempted to debit his bank account in order to retrieve the paychecks that were previously deposited for the pay periods ending September 8, 1993 and September 22, 1993. Claimant maintained that this procedure was illegal and that his bank rejected this attempt. Claimant alleged that Respondent did debit his account for the October 6, 1993 deposit of \$2,025.87. Claimant further maintained that he was entitled to \$1,157.58 of the October 6, 1993 deposit for the period of his employment from September 23, 1993 to September 30, 1993.

Claimant alleged that Respondent froze his personal customer account which he maintained with Respondent and that Respondent informed him that the account would remain frozen until he repaid Respondent the deposits made to his bank account for the pay periods of September 8, 1993 and September 22, 1993.

Respondent maintained that, when Claimant was interviewed in connection with the firm's investigation, he admitted to improperly marking a trade in May, 1993 and further admitted that he believed that the values set by his supervisor on the August positions in his trading account were wrong. Respondent maintained that Claimant was asked to immediately leave Respondent's premises and that, because Claimant never worked a day after that, August 26, 1993 was his last day of employment.

Respondent maintained that after it completed its investigation it determined that Claimant could no longer continue in Respondent's employ. Respondent further maintained that its payroll department inadvertently continued to pay Claimant subsequent to August 26, 1993, but that Claimant was not entitled to these wages. Respondent alleged that, when Claimant's bank refused to reverse the deposits and Claimant would not return the overpayment, it placed a lien on Claimant's personal account for the amount of the overpayment.

Respondent maintained that, under the circumstances, Claimant knew he was being suspended and that he faced possible termination. Respondent alleged that, in recognition of Claimant's

prior years of service, it permitted Claimant to voluntarily resign. Respondent also maintained that, under New York law, Claimant's request for attorney's fees must be dismissed.

RELIEF REQUESTED

Claimant requested that the panel order Respondent to release his account from all restraints and that the proceeds of the account be transferred to him. Claimant also requested an award of \$100,000.00 for the consequences of the illegal acts of Respondent which materially adversely affected Claimant, which sum includes the wrongfully debited sum of \$1,157.58 for wages due. In addition, Claimant requested an award of \$10,000.00 for attorney fees, costs and expenses.

Respondent requested that Claimant's claims be dismissed in all respects, that the panel determine that it may retain the overpayment made to Claimant and that the full costs and expenses of the arbitration be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitration panel made the following rulings as to Respondent, who filed an Answer in this matter, but failed to file a properly notarized submission of the dispute to the NASD:

1. Pursuant to Section 1 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy and specifically as it related to Respondent.
2. The panel found that Respondent was a member of the NASD at the time the controversy arose. Consequently, the panel found personal jurisdiction over Respondent, pursuant to Section 12(a) of the Code.
3. The panel found that the NASD properly served the Statement of Claim upon Respondent, pursuant to Section 25(a) and (c) of the Code.
4. The panel found that Respondent was required to execute and file with the NASD a properly notarized submission agreement, pursuant to Section 25(b) of the Code.

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. Respondent is hereby ordered to release Claimant's account of all restraints and shall transfer the proceeds to Claimant.
2. Respondent be and hereby is liable and shall pay to Claimant the sum of \$1,157.58.

3. Each party shall bear their respective costs, except that Respondent is liable and shall pay to Claimant the sum of \$650.00 to reimburse Claimant for the fees he paid to the NASD.
4. Claimant's request for attorney's fees is hereby denied.
5. All other claims are hereby denied.

FORUM FEES

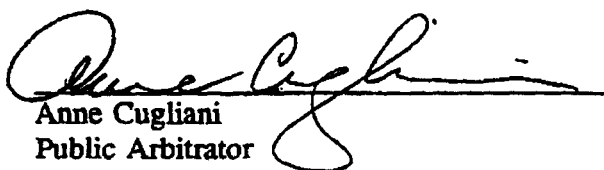
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

filing fee	= \$150.00
1 hearing session	= <u>\$500.00</u>
Total fees assessed	= \$650.00

Respondent be and hereby is liable for the sum of \$650.00, representing the total amount of fees assessed.

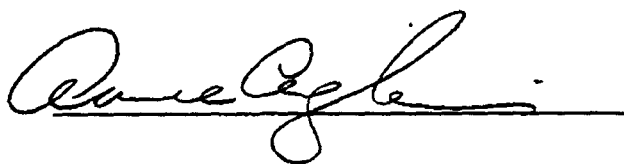
ARBITRATORS' SIGNATURES

Robert Pincus, Esq.
Public Chairperson


Anne Cugliani
Public Arbitrator

Philip C. Loomis, CFA
Industry Arbitrator

I, Anne Cugliani, do hereby affirm that this is my decision in the above-captioned matter.



Date of decision: August 17, 1995

ARBITRATORS' SIGNATURES

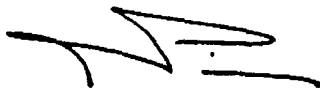


Robert Pincus, Esq.
Public Chairperson

Anne Cugliani
Public Arbitrator

Philip C. Loomis, CFA
Industry Arbitrator

I, Robert Pincus, Esq., do hereby affirm that this is my decision in the above-captioned matter.

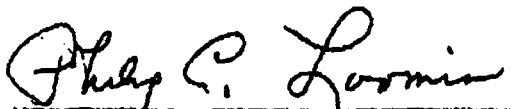


Date of decision: August 17, 1995

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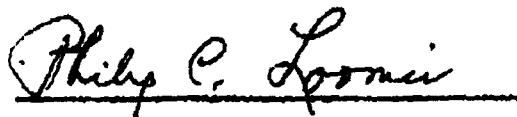
Robert Pincus, Esq.
Public Chairperson

Anne Cugliari
Public Arbitrator



Philip C. Loomis, CFA
Industry Arbitrator

I, Philip C. Loomis, CFA, do hereby affirm that this is my decision in the above-captioned matter.



Date of decision: August 17, 1995