

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Bernie Simon

vs.

Award No.

94-01185

Name of Respondents

**Bear Stearns & Company
Stratton Oakmont, Inc.
Daniel M. Porush**

REPRESENTATION

For Claimant, Bernie Simon ("Claimant"), Ralph A. Gant, Esq., located in New York, New York.

For Respondents, Bear Stearns & Company, Stratton Oakmont, Inc. and Daniel M. Porush ("Respondents"), Franklin D. Ormstead, Esq. from the law firm of Ormstead & Evangelist located in Jericho, New York and Norman B. Arnoff, Esq. from the law firm of Capuder & Arnoff, P.C., located in New York City.

CASE INFORMATION

Statement of Claim was filed on March 29, 1994.

Claimant's Submission Agreement was signed on March 22, 1994.

No Statement of Answer was filed by Respondent Bear Stearns and Company but a Motion to Dismiss was filed on July 14, 1994.

Bear Stearns' Submission Agreement was signed on October 4, 1994.

No Statement of Answer was filed by Respondents Stratton Oakmont, Inc. or Daniel M. Porush.

HEARING INFORMATION

Hearing Date/Sessions: December 5, 1995 - 2 sessions.

Hearing Location: New York County Lawyers' Association, 14 Vesey Street, New York, New York.

CASE SUMMARY

Claimant seeks damages for claims of fraud, unauthorized trading, failure to supervise and violation of the Securities and Exchange Act of 1934.

Claimant alleges that in early May, 1991, he opened an account at Stratton Oakmont, Inc., ("Stratton"),

with the Respondent Daniel M. Porush ("Porush"). Claimant states that Respondent Porush informed Claimant that Stratton cleared through Bear Stearns. Claimant also states that he informed Mr. Porush that he (Claimant) was only interested in Initial Public Offerings ("IPO's") and that he had no interest in the aftermarket. Claimant further states that he advised Mr. Porush that he was interested in purchasing an IPO - Ropak Laboratories (ROPAC) which was being underwritten by Stratton.

Claimant asserts that Mr. Porush informed Claimant that he (Porush) would need Claimant to participate in the aftermarket on the common shares. Claimant also asserts that, in order to obtain the IPO units, he agreed to purchase ROPAC shares in the aftermarket. Claimant further asserts that on May 16, 1991, Mr. Porush purchased, on Claimant's behalf, 1,000 units of ROPAC at 4.50 and 1,000 shares of ROPAC at 7.75.

Claimant maintains that on May 17, 1991 and May 23, 1991 respectively, Mr. Porush, without Claimant's authorization, purchased 1,000 shares of ROPAC. Claimant also maintains that on May 23, 1991, Mr. Porush sold 1,000 ROPAC shares Claimant did not own and that he purchased 300 NOVA warrants and 3,000 IPS Health Care Inc. warrants without Claimant's authorization. Claimant further maintains that on May 24, 1991, Mr. Porush purchased 3,000 additional IPS warrants without authorization.

Claimant contends that upon learning of the alleged unauthorized transactions, he contacted Mr. Porush and demanded cancellation of these transactions.

With respect to the allegations of fraud, Claimant alleges that, "by means of a carefully orchestrated control of the market, Respondents manipulated and rigged the prices of the house stocks by various means including packaging and crossing". Claimant also alleges that IPS was one of the house stocks in questions.

Finally, claimant alleges that Stratton failed to adequately supervise the activities of Mr. Porush.

Respondents deny the allegations of wrongdoing set forth in the Statement of Claim. Respondent Bear Stearns submitted a Motion seeking dismissal of the claim pursuant to Section 16 of the NASD *Code of Arbitration Procedure* ("Code"). Specifically, Respondent Bear Stearns alleges that it entered into a clearing agreement with Respondent Stratton Oakmont, Inc. on or about June 1, 1990. Respondent Bear Stearns also alleges that, pursuant to Rule 382 of the agreement, the introducing broker would be exclusively responsible for supervising all account activity including, inter alia, the conduct of the account and ensuring that all applicable laws and rules are complied with.

Respondent Bear Stearns maintains that, upon the opening of the account at the firm for which Bear Stearns acted as carrying firm, Claimant executed a Customer Agreement. Respondent Bear Stearns also maintains that paragraph 8 of the customer agreement confirms Claimant's agreement that Bear Stearns has no responsibility or liability for any acts or omissions of the introducing broker.

RELIEF REQUESTED

Claimant requests damages in the amount of \$9,218.00, interest at the rate of 9% as of July 1, 1991, punitive damages, attorneys' fees and costs as well as disciplinary action against the Respondents.

Respondents request that the claim be dismissed with prejudice.

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. Respondent Bear Stearns is dismissed from this arbitration proceeding.
2. Claimant is awarded damages in the amount of **NINE THOUSAND TWO HUNDRED EIGHTEEN DOLLARS AND ZERO CENTS (\$9,218.00)**.
3. Claimant is awarded interest in the amount of **ONE THOUSAND FOUR HUNDRED FIFTY ONE DOLLARS AND EIGHTY THREE CENTS (\$1,451.83)**.
4. The claim for punitive damages is denied.
5. The claim for attorneys' fees and costs is denied.
6. Claimant's request for disciplinary enforcement recommendation is denied.
7. The of \$9,218.00, plus interest of \$1,451.83 is assessed against Respondents Stratton Oakmont, Inc. and Daniel Porush jointly and severally.

FORUM FEES

Pursuant to Section 43(c) of the Code, the following Forum Fees are assessed against Respondents Stratton Oakmont, Inc. and Daniel Proush:

Non-refundable Filing Fee: \$75.00
Hearing Session Fee: \$400.00 (2 sessions @ \$200.00 per session)
Total Fees: \$475.00

Claimant paid Total Fees of \$275.00.
Claimant is owed refund of \$200.00.

Respondents owe Total Fees of \$400.00.

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

Sole Public Arbitrator


Fred S. Pieroni

Executed on:

NASD's Date of Decision: 

Date of Decision: January 4, 1996

AFFIRMATION

I, FRED PIERONI, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.


Fred S. Pieroni