

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

James M. Higginbotham

95-04067

Name of Respondents

Bear, Stearns & Co., Inc.;
Jeffrey C. Samsen

REPRESENTATION

For Claimant: James M. Higginbotham ("Higginbotham") appeared pro se.

For Respondents: Bear, Stearns & Co., Inc. ("Bear Stearns") and Jeffrey C. Samsen ("Samsen") were represented by Nicholas P. Iavarone, Esq. and Todd Harold Fox, Esq. of Bellows and Bellows, located in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: August 23, 1995.

Claimant's Submission Agreement signed on: August 17, 1995

Statement of Answer filed by Respondents on: October 17, 1995.

Respondent Bear Stearns' Submission Agreement signed on: October 17, 1995 by Mark E. Lehman, Senior Managing Director, Bear, Stearns & Co., Inc.

Respondent Samsen's Submission Agreement signed on: October 16, 1995.

HEARING INFORMATION

Pre-Hearing Conference: November 21, 1995 for One (1) session before the full panel.

Hearing Date/Sessions: November 25, 1995 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant alleged that Respondent Samsen, while employed by or acting as an agent for Respondent Bear Stearns, misrepresented the quality of an investment of 1,000 shares of SPI Holding Inc.-C1 B. In addition, Higginbotham asserted that Samsen knew or should have known that this was an unsuitable

recommendation for an account the size of his and with his investment objectives. Furthermore, Higginbotham alleged that Samsen misrepresented his responsibilities for the account and failed to keep him adequately informed of the risks as the price of the stock declined.

Respondents denied the material allegations of the Statement of Claim, asserting that Higginbotham was an experienced investor who purchased SPI in November 1993 after discussing in detail the merits and risks of the transaction. Higginbotham closely followed the performance of the shares as it declined and elected to retain ownership after discussions with Samsen. Furthermore, Respondents asserted that Samsen's recommendation of the purchase did not constitute a guarantee of profit and Higginbotham assumed all risks of this transaction. In addition, the Respondents asserted several affirmative defenses.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents for \$12,955.90; a refund of the interest on the debit balance of \$2,955.90 as charged by Bear Stearns on his margin accounts; costs of this proceeding; reasonable fees for representation; and such other relief as would be deemed appropriate under the circumstances.

Respondents requested that the claims asserted be dismissed in their entirety, and that the costs and expenses of the proceeding be assessed entirely against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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 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. The Statement of Claim is hereby dismissed with prejudice and denied in its entirety;*
- 2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and*
- 3. Any relief not specifically awarded is hereby denied.*

OTHER COSTS

Respondent Bear, Stearns & Co., Inc. is liable for and shall pay to the NASD Regulation Inc., Office of Dispute Resolution the \$200.00 surcharge required to be paid pursuant to Section 10333 of the Code of Arbitration Procedure.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing session before a full panel = \$400.00; One (1) hearing session x \$400.00 per session = \$400.00; Total forum fees = \$800.00.

The NASD Regulation Inc., Office of Dispute Resolution shall retain the \$100.00 claim filing fee paid by the Claimant James M. Higginbotham. The \$400.00 hearing session deposit deposited by the Claimant, James M. Higginbotham shall be retained by the Office of Dispute Resolution as payment of a portion of the forum fees due. Respondent Bear, Stearns & Co., Inc. is liable for and shall pay the Office of Dispute Resolution the sum of \$400.00 as forum fees.

Fees are payable to the NASD Regulation Inc., Office of Dispute Resolution.

Concurring Arbitrators' Signatures
Name

Date

/s/ Ralph M. Goren, Esq.
Ralph M. Goren, Esq.
Public Arbitrator
Chairperson

January 10, 1997

/s/ Charles Orlove
Charles Orlove
Public Arbitrator

January 10, 1997

/s/ Ramona V. Larson
Ramona V. Larson
Industry Arbitrator

January 13, 1997

For Dispute Resolution Use Only:
Date of Decision: January 20, 1997