

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Jay A. Soncrant

95-05671

Name of Respondents

Bear, Stearns & Co. Inc.  
Josephthal, Lyon & Ross, Inc.

---

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 4, 1995, Claimant Jay A. Soncrant ("Claimant"), who appeared Pro Se, alleged that Respondent Josephthal, Lyon & Ross, Inc. ("JLR") switched clearings agents from Wertheim Schroder & Co. ("WSC") to Respondent Bear, Stearns & Co. Inc.. ("BSC") resulting in a misplacement of 500 units of Synthetic Blood & Medical Technologies ("SBMT") to his detriment. Claimant further alleged that because of the misplacement he was unable to sell, trade or pledge the asset. Claimant contended that in December of 1990, the units appeared on his account statement but the January 1991 statement did not list the units nor did it indicate what had occurred to them. Claimant further contended that he immediately notified his JLR broker, Andrew Grossman, and that Grossman's assistant informed him to contact BSC to resolve the problem. Claimant alleged that he was unsuccessful in getting a helpful response from BSC, and that as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondent Bear, Stearns & Co. Inc., through its representative and in-house counsel, J. Todd Cook, Esq., maintained that Claimant was given the opportunity to select a clearing firm when JLR ceased its clearing relationship with WSC, but he failed to choose and the account was given to BSC. Respondent further maintained that it appears that WSC took Claimant's SBMT units and converted them to its separate components of SBMT common stock and warrants, with the warrants expiring worthless prior to the account transfer. Respondent contended that it is unable to determine the exact manner in which the SBMT units were processed but is investigating the matter. Respondent further contended that should it be determined that the units were removed from his account without authorization, the appropriate measure of damages would be the market price of the units' components. Respondent maintained that there was not market price for the units' components between January of 1991 and December of 1993, therefore, the Claimant is not entitled to the damages he has requested. Respondent further maintained that it never received a complaint about the transfer from the Claimant, and that as a result of the above, it should not be held liable.

Respondent Josephthal, Lyon & Ross, Inc., through its representative and in-house counsel, Robert E. Murphy, Esq., maintained that Claimant's account was transferred from WSC to BSC in December of 1990 and that Claimant's account contained 500 SBMT units. Respondent further maintained that Claimant was not solicited in selecting a new clearing agent. Respondent contended that BSC is the primary party in this matter because all operational responsibility rests on the clearing firm in this dispute. Respondent further contended that the units were not worthless simply because it was unpriced. Respondent maintained that as a result of the above, it should not be held liable.

### **RELIEF REQUESTED**

Claimant Jay A. Soncrant, requested \$1,505.00 in actual damages, plus punitive damages.

Respondent Josephthal, Lyon & Ross, Inc. and Bear, Stearns & Co. Inc. requested that the claims of the Claimant be dismissed.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, William F. Skewes, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Jay A. Soncrant on November 28, 1995, and by the Respondent Josephthal, Lyon & Ross, Inc. on January 24, 1996, and by Respondent Bear, Stearns & Co. Inc. on January 22, 1996.

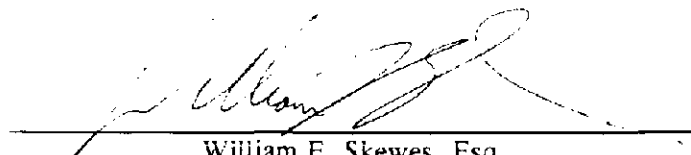
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Jay A. Soncrant, against the Respondent Josephthal, Lyon & Ross, Inc. are denied in their entirety.
2. The Respondent Bear, Stearns & Co. Inc. is liable and shall pay to the Claimant Jay A. Soncrant, \$1,505.00 in actual damages.
3. The Respondent Bear, Stearns & Co. Inc. is liable and shall pay to the Claimant Jay A. Soncrant, simple interest at the rate of 8% per annum from December 10, 1990 to date of payment of the Award.
4. The parties shall bear their respective costs.
5. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Jay A. Soncrant, shall be retained by the NASD, Inc. Respondent Bear, Stearns & Co. Inc. shall pay to the Claimant Jay A. Soncrant, \$50.00 as reimbursement of the filing fee.
6. All other relief requests are denied.

Page Three  
Award 95-05671

**AFFIRMATION**

I, **WILLIAM F. SKEWES, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



William F. Skewes, Esq.

DATE OF DECISION: August 16, 1996