

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

Richard D. Larson

and

96-02639

Name of Respondent

Bear Stearns & Company, Inc.  
Michael Jay Margolis

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### **REPRESENTATION OF PARTIES**

Richard D. Larson ("**Claimant**") was represented by J. Pat Sadler, Esq. and Eric R. Hovdesven, Esq., Sadler & Associates, P.C., Atlanta, Georgia and William S. Lapp, Esq., Lapp, Laurie, Libra, Abramson & Thomson, Minneapolis, Minnesota.

Bear Stearns & Company, Inc. ("**Respondent Bear Stearns**") and Michael Jay Margolis ("**Respondent Margolis**") (collectively as "**Respondents**") were represented by Paul W. Stivers, Esq. and Jeffrey W. Willis, Esq., Rogers & Hardin, Atlanta, Georgia.

### **CASE INFORMATION**

The Statement of Claim was filed on or about June 19, 1996. Submission Agreement of Claimant Richard D. Larson was signed on June 11, 1996.

Statement of Answer was filed by Respondents Bear Stearns & Company, Inc. and Michael Jay Margolis on or about September 3, 1996.

### **HEARING INFORMATION**

A pre-hearing conference was conducted on June 13, 1997 for one (1) session with Arlen G. Restad, presiding.

The hearing was held on Tuesday, July 8, 1997 for two (2) sessions, Wednesday, July 9, 1997 for two (2) sessions, Thursday, July 10, 1997 for two (2) sessions and Friday, July 11, 1997 for two (2) sessions in Minneapolis, Minnesota for a total of eight (8) sessions.

### CASE SUMMARY

Claimant alleged that Respondents made misrepresentations of material facts in connection with the sale of stock of National Vision Associates, Ltd and Grupo Financiero Bancomer; violated the registration requirements of the Wisconsin Uniform Securities Law; breached their fiduciary duty; were negligent; breached their contract; and failed to properly supervise employees. Specifically, Claimant alleged that Respondents made misrepresentations of fact in connection with the purchase of National Vision Associates, Ltd, including but not limited to:

- ▶ there was little or no risk in investing in National Vision;
- ▶ based upon the knowledge and information of mr. Margolis, National Vision would be a \$50 stock;
- ▶ Mr. Margolis knew the management of National Vision inside out; and
- ▶ that National Vision had the management team and structure necessary to manage its growth and maintain profitability.

With respect to Grupo Financiero Bancomer, Claimant alleged that Respondents made misrepresentations, including but not limited to:

- ▶ Claimant had been wronged and they intended to make him whole;
- ▶ Bancomer would be listed on the NYSE by the end of 1994; and
- ▶ Bancomer stock had been cleared for listing on the NYSE.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the Claimant was and is a wealthy and experienced businessman with a high net worth and annual income. Respondents also stated that the recommendations to purchase National Vision & Bancomer were consistent with the Claimant's stated investment objective of growth. it was further stated that Claimant's decisions to purchase these stocks were made after numerous discussions with the broker and that Claimant carefully considered the trades and made independent investment decisions.

With respect to the allegation that the Bancomer stock was not registered, Respondents state that the Bancomer stock is exempt from registration under both the federal and Georgia securities laws.

### **RELIEF REQUESTED**

Claimant requested an award of compensatory damages in the amount of \$391,850 for trading losses and \$74,261 for margin interest; punitive damages in the amount of \$783,700; interest compounded annually at the lawful rate; reasonable attorneys' fees of at least one-third of all amounts awarded; costs; and for such other further relief as the panel deems just and appropriate. In addition to monetary damages, Claimant requested that the Panel make a disciplinary referral.

Respondents requested that the Statement of Claim be dismissed and that costs of this proceeding be assessed against the Claimant.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents Bear Stearns & Company, Inc. and Michael Jay Margolis did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Prior to the commencement of the hearing of this matter, Claimant dismissed with prejudice the claims asserted against William Bingo and Tony Rae Golden.

At the commencement of the hearing of this matter, Respondent Margolis requested leave to file a counterclaim for fees, costs and expenses for his appearance. After considering the pleadings and the arguments presented on behalf of the parties, the undersigned arbitrators **denied** the request.

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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

### **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 Bear Stearns & Company, Inc. shall be and hereby is liable for and shall pay to the Claimant Richard D. Larson the sum of \$111,391.50 (**one hundred eleven thousand three hundred ninety-one dollars and fifty cents**) as compensatory damages.

2. Respondent Bear Stearns & Company, Inc. shall be and hereby is liable for and shall pay to the Claimant Richard D. Larson the sum of \$1,250 (**one thousand two hundred and fifty dollars**) as reimbursement for filing fees and hearing session deposit paid to the NASD.
3. Each party shall bear its own costs, expenses and fees, including attorneys fees incurred in this matter not specifically enumerated herein.
4. The requests for punitive damages and a disciplinary referral are denied.

### **FORUM FEES**

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were eight (8) sessions x \$1,000 and one (1) session x \$300 = \$8,300 in forum fees. Pursuant to Rule 10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$250 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Richard D. Larson. Respondent Bear Stearns & Company, Inc. shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$7,300 as the balance due for forum fees.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **assess** the non-refundable member surcharge in the amount of \$500 against Respondent Bear Stearns & Company, Inc. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

/s/ Arlen G. Restad  
Arlen G. Restad  
Public Arbitrator, Presiding Chair  
/s/ John S. Hoyt, Jr., Ph.D  
John S. Hoyt, Jr., Ph.D  
Public Arbitrator  
/s/ Scott R. Jensen  
Scott R. Jensen  
Industry Arbitrator

Dated: July 28, 1997  
  
July 18, 1997  
  
July 17, 1997