

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Nulsen B. Smith

96-03677

Names of Respondents

Bear Stearns & Company
Michael Cooney
Bruce Lisman
William M. Jennings

REPRESENTATION

For Claimant Nulsen B. Smith ("Claimant") appeared Anthony D. Rizzotti, Esq., of the law firm Dwyer & Collora, LLP, located in Boston, Massachusetts.

For Respondents Bear Stearns & Company ("Bear Stearns"), Michael Cooney ("Cooney"), Bruce Lisman ("Lisman") and William M. Jennings ("Jennings") (collectively referred to as "Respondents") appeared Barry Y. Weiner, Esq., of the law firm Shapiro Israel & Weiner, located in Boston, Massachusetts.

CASE INFORMATION

Claimant's Statement of Claim was filed on August 23, 1996. Claimant's Submission Agreement was signed on August 23, 1996.

Respondents filed a Joint Statement of Answer on October 18, 1996. Bear Stearns' Submission Agreement was signed on October 3, 1996. Cooney's Submission Agreement was signed on September 30, 1996. Lisman's Submission Agreement was signed on September 26, 1996. Jennings' Submission Agreement was signed on September 26, 1996.

Joint Statement of Agreement to Arbitrate Pursuant to Certain Provisions Section 46 of the NASD Code was filed on January 9, 1998.

HEARING INFORMATION

Pre-Hearing Conference:

April 17, 1997

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|-------------------------|--------------------|---|--------------|
| Hearing Dates/Sessions: | August 6, 1997 | - | Two Sessions |
| | August 7, 1997 | - | One Session |
| | August 8, 1997 | - | Two Sessions |
| | August 11, 1997 | - | Two Sessions |
| | August 12, 1997 | - | Two Sessions |
| | September 22, 1997 | - | Two Sessions |
| | September 23, 1997 | - | Two Sessions |
| | September 24, 1997 | - | Two Sessions |
| | October 8, 1997 | - | Two Sessions |
| | November 4, 1997 | - | Two Sessions |
| | November 5, 1997 | - | One Session |
| | December 19, 1997 | - | One Session |

The hearings were conducted at the offices of NASD Regulation, Inc. located in Boston, Massachusetts.

CASE SUMMARY

Claimant alleged that he was employed by Bear Stearns as a Senior Managing Director in its Boston office. Claimant also alleged that, after his transfer from Atlanta to Boston in 1988, Bear Stearns' institutional equity sales in the Boston office increased significantly. Claimant further alleged that he was a key member of the team responsible for this success.

Claimant asserted that, in late 1994, Lisman and Jennings, Senior Managing Directors of Bear Stearns, decided to hire Cooney to assist him in the operation of the Boston office. Claimant also asserted that, over the next year, Cooney, with the knowledge and support of Lisman and Jennings, undermined his authority, his reputation and subjected him to continuous harassment. Claimant further asserted that he was ultimately removed from his management position, and, finally, in March 1996, Bear Stearns terminated his employment.

Claimant contended that Bear Stearns entered into an employment contract with him which was terminable only for just cause and which implied a covenant of good faith. Claimant also contended that Bear Stearns breached that contract by terminating him without just cause and, by its conduct, breached its covenant of good faith. Claimant further contended that Respondents, with improper motives and/or through the use of improper means, intentionally interfered with his accounts and knowingly caused damages to these relations.

Claimant maintained that Respondents made false statements about his character, reputation and performance and recklessly and excessively published false and misleading information about him. Claimant also maintained that these defamatory statements were made with knowledge of their falsity and with the intent to harm him. Claimant further maintained that Lisman, Jennings and Cooney intended to inflict emotional distress on him or should have known that emotional distress would likely result from their conduct. Claimant alleged that Lisman and Jennings breached their fiduciary duties to him.

Claimant alleged that, in violation of Massachusetts General Law c. 151B, Respondents

discriminated against him because of his age in the terms, conditions and privileges of his employment.

Respondents denied the general allegations of wrongdoing. Respondents maintained that Claimant was terminated for legitimate business reasons which included his ineffectiveness as a manager and his inability to work cooperatively with others to the point of being a divisive force within the office. Respondents also maintained that, during Claimants' tenure as manager, Bear Stearns received numerous complaints from co-employees regarding his effectiveness as a manager and his ability to get along with others in the office. Respondents further maintained that they attempted to rectify the situation in 1995 by hiring a management consultant to work with Claimant, but Claimant's performance did not improve.

Respondent Bear Stearns denied that Claimant had an employment contract which allowed it to terminate him only for cause. Bear Stearns maintained that Claimant was an at-will employee who could be fired for no reason, and, accordingly, it was well within its rights in dismissing him. Bear Stearns further maintained that Claimant's relationships with accounts belonged to Bear Stearns, not Claimant personally, and could not be the subject of a wrongful interference claim.

Respondents denied they were liable for defamation since the Claimant failed to identify any statements which he claims to be false and defamatory. Respondents asserted that Claimant was solely terminated for legitimate business reasons, not because he was over 40 years old. Respondents also asserted that the Statement of Claim contained no facts which lead to the conclusion that Claimant's age played any role in his discharge.

Lisman, Jennings and Cooney denied that their actions with regard to Claimant were extreme or outrageous, and also denied that Claimant suffered emotional distress. Lisman and Jennings further asserted that neither of them were "fiduciaries," nor did they owe Claimant a fiduciary duty.

RELIEF REQUESTED

Claimant requested not less than \$3,000,00.00 in economic loss, \$750,000.00 in other compensatory damages, \$750,000.00 in punitive damages, other losses proved during the arbitration proceeding, attorneys' fees and costs.

Respondents requested that the Statement of Claim be dismissed in its entirety.

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 original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Bear Stearns is hereby liable and shall pay Claimant the sum of \$140,000.00 under Count I of the Statement of Claim.
2. Claimant shall recover nothing under the other counts of the Statement of Claim.
3. Claimant's request for punitive damages is denied.
4. The parties shall bear their respective costs, including attorneys' fees, except that Bear Stearns is hereby liable and shall pay Claimant the sum of \$2,600.00 to reimburse Claimant for deposits previously paid to NASD Regulation, Inc.
5. All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee have assessed the following forum fees:

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|-------------------------------------|----------------------|
| 1 pre-hearing conference x \$300.00 | = \$ 300.00 |
| 21 hearing sessions x \$1,500.00 | = <u>\$31,500.00</u> |
| Total forum fees | = \$31,800.00 |

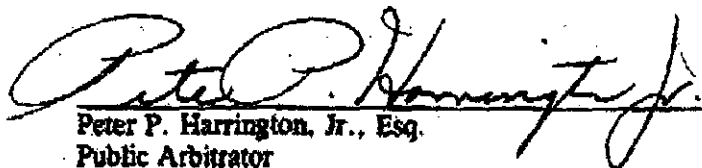
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|---|----------------------|
| additional arbitrator compensation for pre-hearing conference | = \$ 200.00 |
| additional arbitrator compensation for hearing sessions | |
| 12 days of hearings x \$600.00 (three arbitrators) | = <u>\$ 7,200.00</u> |
| Total additional arbitrator compensation | = \$ 7,400.00 |

1. Bear Stearns is hereby liable for the sum of \$39,200.00, representing the total amount of forum fees and the total additional arbitrator compensation. Claimant previously deposited \$2,600.00, and Respondents previously deposited \$1,600.00. Therefore, Bear Stearns shall pay the balance of \$35,000.00 to NASD Regulation, Inc. and \$2,600.00 to Claimant as provided in the "Award" section above.
2. Bear Stearns is hereby liable for and shall pay the sum of \$500.00, representing the member surcharge.

Fees are payable to NASD Regulation, Inc.

Arbitrators' Signatures

Richard J. Grahm, Esq.
Public Arbitrator - Chairperson



Peter P. Harrington, Jr., Esq.
Public Arbitrator

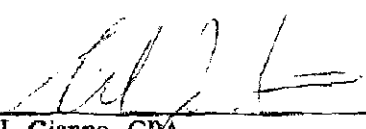
Mark J. Gianni, CPA
Industry Arbitrator

Date of Decision: March 3, 1998

Arbitrators' Signatures

Richard J. Grahn, Esq.
Public Arbitrator - Chairperson

Peter P. Harrington, Jr., Esq.
Public Arbitrator



Mark J. Gianno, CPA
Industry Arbitrator

Date of Decision: March 3, 1998