

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimants

Alan S. Fellheimer & Judith Fellheimer

Case No. 99-00327

Name of Respondents

Bear Stearns & Co., Inc.  
Michael C. Nolan

Hearing Location: Philadelphia, PA

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**REPRESENTATION OF PARTIES**

Claimants, Alan S. and Judith Fellheimer ("Claimants") were represented by Stuart J. Guber, Esq. of the law firm of Berger & Montague, P.C., Philadelphia, PA.

Respondents, Bear Stearns & Co., Inc. ("Bear Stearns") and Michael Nolan ("Nolan") collectively referred to as "Respondents" were represented by Alan M. Gelb, Esq. of the law firm of Jones Hirsch Connors & Bull, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: January 21, 1999  
Revised Statement of Claim filed on or about: March 25, 1999  
Claimants signed the Uniform Submission Agreement: March 23, 1999

Statement of Answer filed by Respondents, Bear Stearns & Co., Inc. and Michael Nolan, on or about: May 18, 1999  
Bear Stearn's Uniform Submission Agreement was executed by Mark E. Lehman, Senior Managing Director, Bear Stearns & Co., Inc.: May 18, 1999  
Nolan signed the Uniform Submission Agreement: May 18, 1999

**CASE SUMMARY**

Claimants asserted the following causes of action: material misrepresentation of fact by recommending that Claimants invest in Curators Partnership, L. P. Claimants alleged that they would not have invested in Curators Partnership but for the misrepresentations of Respondents.

Respondents denied all allegations of wrongdoing maintained in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a cause of action for which relief may be granted; the claims are barred by the applicable statutes of limitations; any loss sustained by Claimants was the direct and proximate result of Claimants' own conduct or negligence; Claimant are precluded from any recovery against Bear Stearns in this proceedings as Claimants failed to use the requisite care and diligence in the monitoring, trading, management and handling of their own account; losses sustained by the Claimants are the direct result of market conditions and not any act or omissions by Respondents; Claimants failed to

mitigate their losses; and, Respondents acted in good faith and in compliance with all applicable securities laws, regulations and industry standards.

### **RELIEF REQUESTED**

**Claimants requested:**

Compensatory Damages	\$500,000.00
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondents requested that the claims against them be dismissed in their entirety and that the costs of the proceeding be assessed against Claimants.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Panel determined to dismiss the Claimants' case after Claimant put on their case-in-chief. Claimants did not meet their burden of proof. Respondents were not required to present their case.

At the hearing on September 12, 2000, the Respondents made a motion to bar the Claimants' from presenting any testimony on the issue of "due diligence", claiming that their Claim and their Amended Claim indicated that this was a case of "fraud", and no formal request to amend the statement of claim to include allegations of "due diligence" had been made. After the Panel heard arguments from both side on whether the evidence should be included, the Panel denied Claimants' request to further amend the statement of claim and granted Respondents' motion to bar Claimants from presenting evidence on the claims related to "due diligence".

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimants' claim was dismissed in its entirety on motion at the hearing.
2. That the parties shall bear their own costs, including attorneys' fees, except as Fees are specifically addressed below.
3. That any and all claims for relief not specifically addressed herein are denied in their entirety.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each

claim:  
Initial claim filing fee = \$200

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

- Member surcharge	= \$1,500
- Pre-hearing process fee	= \$ 600
Hearing process fee	= \$2,500

**Postponement Fee Assessment**

Adjournment requested during this proceeding:

Hearing date adjourned - June 27, 2000, adjournment by Claimants = \$750

**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$300	= \$ 600
Pre-hearing conferences: March 13, 2000	1 session
June 5, 2000	1 session
One (1) Pre-hearing session with Panel x \$750	= \$ 750
Pre-hearing conference: February 28, 2000	1 session
Nine (9) Hearing sessions x \$750	= \$6,750
Hearing Dates: June 21, 2000	2 sessions
June 22, 2000	2 sessions
June 23, 2000	2 sessions
September 11, 2000	2 sessions
September 12	<u>1 session</u>
Total Forum Fees	= \$8,100

The Panel has assessed \$8,100 of the forum fees to Alan and Judith Fellheimer.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Claimants, requested tape duplication = \$135  
Respondent Bear Stearns, requested tape duplication = \$210

**Fee Summary**

Claimants were assessed the following fees:  
Initial Filing Fee = \$ 200

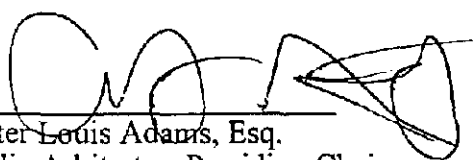
Adjournment Fee	= \$ 750
Forum Fees	= \$8,100
<u>Administrative Costs</u>	= \$ 135
Total Fees	= \$9,185
<u>Less payments</u>	= \$1,700
Balance Due NASD Dispute Resolution, Inc.	= \$7,485

Respondent Bear Stearns is assessed the following fees:

Member Fees	= \$4,600
<u>Administrative Costs</u>	= \$ 210
Total Fees	= \$4,810
<u>Less payments</u>	= \$4,735
Balance Due NASD Dispute Resolution, Inc.	= \$ 75

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Lester Louis Adams, Esq.  
Public Arbitrator, Presiding Chairperson

11/20/2000  
Signature Date

\_\_\_\_\_  
Mark E. Hollern  
Public Arbitrator, Panelist

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Robert Lankin, CFP, Esq.  
Non Public Arbitrator

\_\_\_\_\_  
Signature Date

December 1, 2000  
Date of Award Served by NASD Dispute Resolution

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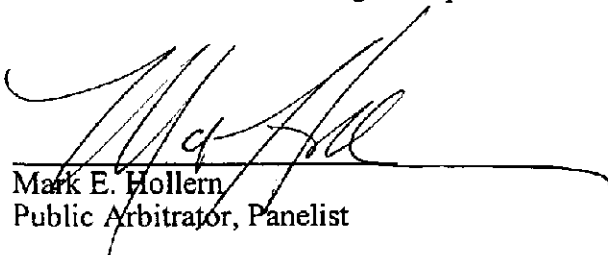
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Public Arbitrator, Presiding Chairperson

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Signature Date

  
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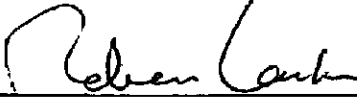
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Lester Louis Adams, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

\_\_\_\_\_  
Mark E. Hollem  
Public Arbitrator, Panelist

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Robert Lankin, CFP, Esq.  
Non Public Arbitrator

11/18/00  
\_\_\_\_\_  
Signature Date

December 1, 2000  
\_\_\_\_\_  
Date of Award Served by NASD Dispute Resolution