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Award  
NASD Dispute Resolution, Inc.

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In the Matter of the Arbitration Between:

James J. Striegel and Terri Striegel,  
Claimants

Vs.

Bear Stearns & Co., Inc., William McBee and William Vincent Swisher  
Respondents.

Case Number: 99-05345

Hearing Site: Dallas, Texas

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REPRESENTATION OF PARTIES

Claimants, James J. Striegel and Terri Striegel, hereinafter referred to as "James and Terri Striegel" were represented by Robert E. Goodman, Esquire, Attorney at Law, Dallas, Texas.

Respondents, Bear Stearns & Company Incorporated, hereinafter referred to as "Bear Stearns", William McBee, hereinafter referred to as "McBee" and William Vincent Swisher, hereinafter referred to as "Swisher" were represented by Cheryl Jerome Moore, Esquire and David R. Clouston, Esquire of the Firm Baker & McKenzie, located in Dallas, Texas.

CASE INFORMATION

Statement of Claim filed on or about: December 15, 1999.

Claimants, James and Terri Striegel signed the Uniform Submission Agreement:  
November 8, 1999.

Respondents, Bear Stearns, McBee and Swisher jointly filed their Statement of Answer  
on or about: February 4, 2000.

Respondent, Bear Stearns signed the Uniform Submission Agreement on January 13,  
2000.

Respondent, McBee signed the Uniform Submission Agreement on January 10, 2000.  
Respondent, Swisher signed the Uniform Submission Agreement on January 10, 2000.

### CASE SUMMARY

Claimants, James and Terri Striegel alleged the following causes of action against the Respondents, Bear Stearns, McBee and Swisher: failure to supervise, breach of fiduciary duty, misrepresentation/non-disclosures, churning, omission of facts and suitability, insider trading and common law fraud. The causes of action relate to purchases and sales in Claimants' account by Respondents including the following securities: First Plus Financial Corporation options, EEX Corporation and Triton Energy, Ltd.

Unless specifically admitted in their Statement of Answer, Respondents, Bear Stearns, McBee and Swisher denied all allegations set forth in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a claim against Respondents upon which relief may be granted
2. By failing to object to the handling of their accounts, despite being specifically informed of the activity of their accounts, Claimants, James and Terri Striegel waived their rights to make the instant claims and ratified the activity in their accounts.
3. Claimants, James and Terri Striegel expressly and/or by their conduct ordered, approved, authorized, participated in and ratified the transactions complained of and upon which recovery is sought and are accordingly estopped or otherwise precluded from recovery.
4. All risks concerning the purchase and sale of securities in Claimants' James and Terri Striegel accounts were fully known to them and they knowingly, willingly and voluntarily assumed the risk of investing in the stock market.
5. All recommendations made by Respondents, Swisher and McBee were made in good faith and based upon sound factual basis.
6. Claimants, James and Terri Striegel are precluded from recovery since the losses allegedly sustained by claimants were a direct and proximate result of their own conduct and/or negligence and not any act or omission on the part of the Respondents.
7. Claimants, James and Terri Striegel are precluded from recovery because they failed to take reasonable and prudent action to mitigate their damages, if any.
8. Claimants, James and Terri Striegel are precluded from recovery against Respondent, Bear Stearns in this proceeding because, at all times relevant hereto, Bear Stearns maintained an adequate and reasonable system of supervision and control of its employees, including Swisher and McBee.
9. Claimants, James and Terri Striegel are precluded from any recovery against Respondent, Bear Stearns in this proceeding because, at all times relevant hereto, Bear Stearns acted in good faith, in accordance with industry standards of conduct, and in compliance with all applicable securities laws and regulations.

10. Claimants, James and Terri Striegel are barred, in whole or in part, by the defense of in pari delicto based upon their own participation in, and acceptance of the benefits of, the alleged improper conduct and/or use of material, non-public information.
11. Respondents are not liable to Claimants because they did not breach any duty, including any duty of good faith and fair dealing, in handling Claimants' accounts.
12. Respondents are not liable to Claimants, because they did not breach any warranty, including any implied warranty, that they act in a commercially reasonable manner.
13. Claimants, James and Terri Striegel causes of action are barred, in whole or in part, by the applicable statutes of limitations.

#### RELIEF REQUESTED

Claimants, James J. Striegel and Terri Striegel, requested:

Compensatory Damages	\$420,000
Interest	unspecified
Costs	unspecified
Punitive Damages	unspecified
Attorney's Fees	unspecified

Respondents, Bear Stearns, McBee and Swisher, requested that the Statement of Claim be dismissed in its entirety with prejudice. Respondents, Swisher and McBee further request that all references to this matter be expunged from their CRD records.

#### OTHER ISSUES CONSIDERED AND DECIDED

Respondent made an oral motion in the hearing, requesting an order to dismiss the case and expunge all records from NASD Records. After due consideration, the panel denied the Respondents requested motion. Following the presentation of Respondent's case and Claimant's cross-examination, counsel for Respondent reurged the Motion for an Order of Dismissal and Expungement and the panel granted the Motion in its entirety.

#### 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 the Arbitration Panel hereby grants Respondents' Motion for Dismissal and Expungement and hereby dismisses and denies all of Claimants' requests for relief and orders expungement: and
2. That the Arbitration Panel recommends the expungement of all references to the above captioned arbitration from Respondents William McBee (CRD 155824) and William Vincent Swisher's (CRD 155826) registration records maintained by the NASD Central

Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent's must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive;

3. That any and all relief not specifically addressed herein, including punitive damages, is dismissed and denied.

### 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	= \$300
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#### 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 persons at the time of the events giving rise to the dispute. In this matter, Bear Stearns & Company Incorporated is a member.

Member surcharge	= \$1,500
Pre-hearing process fee	= \$600
Hearing process fee	= \$2,500
Total Fees	= \$4,600

#### Adjournment Fees

Adjournments requested during these proceedings:

December 13 and 14, 2000, adjournment by Claimants by the panel)	= \$0 (\$1,125 waived)
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#### Forum Fees and Assessments

The arbitrators have the authority to assess 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:

One (1) Pre-hearing session with Single arbitrator x \$450	= \$450
Pre-hearing conference: November 15, 2000	1 session
One (1) Pre-hearing session with Panel x \$1,125	= \$1,125
Pre-hearing conferences: June 27, 2000	1 session

Nine (9) Hearing sessions with Panel x \$1,125  
= \$10,125

Hearing Date(s):	May 14, 2001	3 sessions
	May 15, 2001	3 sessions
	May 16, 2001	3 sessions
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Total Forum Fees		= \$11,700

The Panel has assessed the Forum Fees in equal shares between the Claimant, James J. Striegel and the Respondent, Bear Stearns & Company, Incorporated.

1. The Panel has assessed \$5,850.00 in forum fees jointly and severally to the Claimants, James J. Striegel and Terri Striegel.
2. The Panel has assessed \$5,850.00 in forum fees to the Respondent, Bear Stearns & Company, Incorporated.

Fee Summary

1. Claimants, James J. Striegel and Terri Streigel, be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$300.00
Adjournment Fees	= \$0
Forum Fees	= \$5,850.00
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Total Fees	= \$6,150.00
<u>Less payments</u>	= \$1,800.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,350.00

2. Respondent, Bear Stearns & Company Incorporated, be and hereby is solely liable for:

Forum Fees	= \$5,850.00
<u>Member Fees</u>	= \$4,600.00
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Total Fees	= \$10,450.00
<u>Less payments</u>	= \$3,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$6,850.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

G. Maynard Green, JD  
Roland D. Freeman  
Robert C. Upton, Jr.

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Public, Presiding Chair  
Non-Public, Panelist  
Public, Panelist

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G. Maynard Green  
Public Arbitrator, Presiding Chair

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Signature Date

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Roland D. Freeman  
Public Arbitrator, Panelist

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Signature Date

\_\_\_\_\_  
Robert C. Upton, Jr., Esq.  
Non-Public Arbitrator, Panelist

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Signature Date

\_\_\_\_\_  
Date of Service (For NASD-Dispute Resolution office use only)







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**ARBITRATION PANEL**

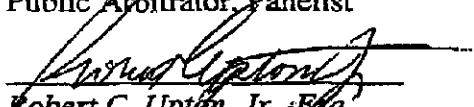
<i>G. Maynard Green, JD</i>	-	<i>Public, Presiding Chair</i>
<i>Roland D. Freeman</i>	-	<i>Non-Public, Panelist</i>
<i>Robert C. Upton, Jr.</i>	-	<i>Public, Panelist</i>

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*G. Maynard Green*  
Public Arbitrator, Presiding Chair

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Signature Date

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*Roland D. Freeman*  
Public Arbitrator, Panelist

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Signature Date

  
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*Robert C. Upton, Jr., Esq.*  
Non-Public Arbitrator, Panelist

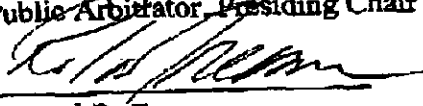
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**ARBITRATION PANEL**

G. Maynard Green, JD  
Roland D. Freeman  
Robert C. Upton, Jr.

Public, Presiding Chair  
Non-Public, Panelist  
Public, Panelist

G. Maynard Green  
Public Arbitrator, Presiding Chair  
  
Roland D. Freeman  
Public Arbitrator, Panelist

Signature Date

6-18-01  
Signature Date

Robert C. Upton, Jr., Esq.  
Non-Public Arbitrator, Panelist

Signature Date

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## NASD-DR Award

Striegel vs. Bear Stearns, McBee and Swisher

Arbitration # 99-05345

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ARBITRATION PANEL*G. Maynard Green, JD**Roland D. Freeman**Robert C. Upton, Jr.**Public, Presiding Chair**Non-Public, Panelist**Public, Panelist*

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*G. Maynard Green*

Public Arbitrator, Presiding Chair

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Signature Date

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*Roland D. Freeman*

Public Arbitrator, Panelist

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Signature Date

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*Robert C. Upton, Jr., Esq.*

Non-Public Arbitrator, Panelist

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*16 JUNE 01*  
Signature Date

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Date of Service (For NASD-Dispute Resolution office use only)