

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Qimat R. Goyal, (Claimant) vs. Fimat USA, Inc., Fimat Futures USA, Inc., Fimat International Banque, S.A., Stephen L. Forman, and Stephen Bergan, (Respondents)

Case Number: 00-04320

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Qimat R. Goyal, hereinafter referred to as "Claimant", appeared *pro se*. Previously represented by: Eric J. Sussman, Esq., a sole practitioner, Garden City, NY.

Respondents, Fimat USA, Inc. ("Fimat") and Fimat Futures USA, Inc. ("Fimat Futures"): Stephen L. Ratner, Esq., Katten Muchin Zavis Rosenman (formerly Rosenman & Colin LLP), New York, NY.

Respondent, Stephen Bergan ("Bergan"), did not appear at the hearings in this matter. Previously represented by: Stephen L. Ratner, Esq., Katten Muchin Zavis Rosenman (formerly Rosenman & Colin LLP), New York, NY.

Respondents, Fimat International Banque, S.A. ("Fimat International") and Stephen L. Forman ("Forman"), did not make appearances in this matter.

CASE INFORMATION

Statement of Claim filed on or about: September 26, 2000.

Opposition to Motion to Dismiss filed by Claimant on or about: May 7, 2001.

Claimant signed the Uniform Submission Agreement: September 26, 2000.

Joint Statement of Answer and Motion to Dismiss filed by Fimat, Fimat Futures, and Bergan on or about: April 17, 2001.

Fimat signed the Uniform Submission Agreement: April 17, 2001.

Fimat Futures did not sign a Uniform Submission Agreement.

Bergan did not sign a Uniform Submission Agreement.

Fimat International did not file a Statement of Answer or sign a Uniform Submission Agreement.

Forman did not file a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; breach of fiduciary duty; unauthorized trading; and negligent supervision. Claimant's claim involved positions in Standard & Poors futures indexes, futures, and options on futures positions.

Unless specifically admitted in their Answer, Fimat, Fimat Futures, and Bergan denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant did not rely to his detriment on any action or inaction of Respondents or on any act or omission legally attributable to Respondents; Claimant's claims are barred, in whole or in part, by the doctrines of unclean hands, waiver, estoppel, and laches; Claimant's claims are barred because they were not brought in a timely manner; Claimant's losses, if any, were caused by his own conduct, including, but not limited to, his breach of contract and negligence; and Fimat and Bergan discharged their responsibilities in good faith, in a professional and ethical manner, and all of their actions were within the parameters of accepted procedure and all applicable exchange and governmental regulation.

RELIEF REQUESTED

Claimant requested:

- a. Compensatory damages in the amount of \$1,119,717.00;
- b. Interest at the rate of 9% accruing from October 15, 1999 until the Award is paid in full;
- c. The costs and fees associated with bringing this arbitration claim;
- d. Punitive damages; and
- e. Such other relief as the Panel may deem just.

Fimat, Fimat Futures, and Bergan requested that the Panel:

- a. Dismiss the Statement of Claim in its entirety;
- b. Award Respondents the costs of this proceeding, including attorneys' fees; and
- c. Award Respondents such other and further relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

By letter dated December 28, 2000, Claimant advised NASD Dispute Resolution, Inc. that he was withdrawing his claims against Fimat International and Forman.

Prior to the hearing in this matter, the Panel granted the Motion to Dismiss with respect to Respondent Bergan only.

Respondents Fimat and Fimat Futures reasserted their Motion to Dismiss at the conclusion of Claimant's case. The Panel denied said Motion.

After the first day of hearings, Claimant decided to continue *pro se* following the illness of his attorney.

Fimat Futures, Bergan, Fimat International, and Forman did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and are bound by the determination of the Panel on all issues submitted.

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.

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. Fimat and Fimat Futures be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$88,000.00 as compensatory damages.
2. Claimant's request for punitive damages is hereby denied.
3. All other requests for relief are hereby 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	= \$ 500.00
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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 person at the time of the events giving rise to the dispute. In this matter, Fimat USA, Inc. is a party.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel x \$1,200.00 = \$ 3,600.00

Pre-hearing conferences:	October 4, 2001	1 session
	November 20, 2001	1 session
	April 4, 2002	1 session

Six (6) Hearing sessions x \$1,200.00 = \$ 7,200.00

Hearing Dates:	May 21, 2002	2 sessions
	May 22, 2002	2 sessions
	May 23, 2002	2 sessions

Total Forum Fees = \$10,800.00

1. The Panel has assessed \$5,400.00 of the forum fees against Claimant.
2. The Panel has assessed \$5,400.00 of the forum fees jointly and severally against Fimat and Fimat Futures.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$5,400.00
Total Fees	= \$5,900.00
<u>Less payments</u>	= \$1,700.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,200.00

2. Fimat be and hereby is solely liable for:

<u>Member Fees</u>	= \$7,600.00
<u>Total Fees</u>	= \$7,600.00
<u>Less payments</u>	= \$7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. Fimat and Fimat Futures be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$5,400.00
<u>Total Fees</u>	= \$5,400.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$5,400.00

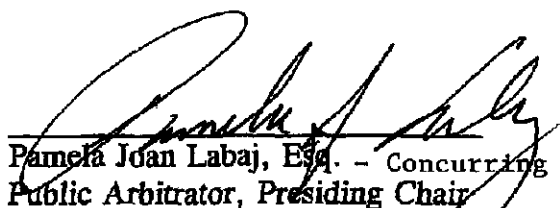
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Pamela Joan Labaj, Esq.	-	Public Arbitrator, Presiding Chair
Joan M. Traub, Esq.	-	Public Arbitrator
Martin J. Malia	-	Industry Arbitrator

Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Pamela Joan Labaj, Esq. - Concurring Arbitrator
Public Arbitrator, Presiding Chair

6-10-02

Signature Date

Joan M. Traub, Esq. - Dissenting Arbitrator
Public Arbitrator

Signature Date

Martin J. Malia - Concurring Arbitrator
Industry Arbitrator

Signature Date

June 28, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

Pamela Joan Labaj, Esq.	-	Public Arbitrator, Presiding Chair
Joan M. Traub, Esq.	-	Public Arbitrator
Martin J. Malia	-	Industry Arbitrator

Arbitrators' Signatures

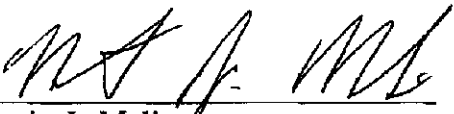
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Pamela Joan Labaj, Esq. - Concurring Arbitrator
Public Arbitrator, Presiding Chair

Signature Date

Joan M. Traub, Esq. - Dissenting Arbitrator
Public Arbitrator

Signature Date



Martin J. Malia - Concurring Arbitrator
Industry Arbitrator



Signature Date

June 28, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

Pamela Joan Labaj, Esq.	-	Public Arbitrator, Presiding Chair
Joan M. Traub, Esq.	-	Public Arbitrator
Martin J. Malia	-	Industry Arbitrator

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Pamela Joan Labaj, Esq. - Concurring Arbitrator
Public Arbitrator, Presiding Chair

Signature Date

Joan M. Traub (dissenting)
Joan M. Traub, Esq. - Dissenting Arbitrator
Public Arbitrator

June 17, 2002
Signature Date

Martin J. Malia - Concurring Arbitrator
Industry Arbitrator

Signature Date

June 22, 2002
Date of Service (For NASD office use only)