

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

C. James Jensen, Claimant v. First Montauk Securities Corporation and Michael Jay Strasser,  
Respondents

Case Number: 02-06787

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

Robert L. Gonser, Esq.  
Resolution Law Group, P.C.  
Lafayette, California

For Respondent Michael Jay Strasser:

Michael Jay Strasser  
New York, New York

**CASE INFORMATION**

Statement of Claim filed: November 7, 2002

Claimant's Uniform Submission Agreement signed: October 22, 2002

Statement of Answer and Cross-Claim filed by Respondent First Montauk Securities Corporation  
("FMSC"): February 11, 2003

Respondent FMSC's Uniform Submission Agreement signed: December 13, 2002

**CASE SUMMARY**

*Claimant alleged the following claims with respect to his margin account and in connection with investments in various securities: 1) Fraud; 2) Failure to Supervise; 3) Breach of Fiduciary Duty; 4) Breach of Contract; 5) Unauthorized Trading; 6) FMSC is Liable Under the Theory of Respondeat Superior; and 7) Violation of California Corporations Code. Claimant's Claim did not specify the securities at issue in this matter.*

### **RELIEF REQUESTED**

Claimant requested:

1. Compensatory damages in excess of \$1,000,000.00 or in a greater amount according to proof at hearing;
2. If the Panel deems appropriate, rescission of all trades transacted in the Jensen account pursuant to Cal. Corp. Code Sections 25401 and 25210;
3. Margin interest and commissions estimated to exceed \$250,000.00 on and as a result of the unauthorized and excessive trades;
4. Attorney's fees pursuant to contract and statute;
5. Pre-judgment interest at the legal rate;
6. Punitive damages;
7. Costs; and
8. Such other relief as the Panel deems just and proper.

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

On November 25, 2002, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators. Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Respondent Michael Jay Strasser did not file with NASD Dispute Resolution ("NASD-DR") a Statement of Answer or properly executed submission to arbitration. The Panel determined that Respondent Strasser has been properly served with Claimant's Statement of Claim and further determined that Respondent Strasser is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and is bound by the determination of the Panel on all issues submitted.

On August 11, 2004, Claimant's counsel advised that Claimant had settled all claims against FMSC. On August 12, 2004, counsel for Respondent FMSC advised that in light of the settlement reached between Claimant and FMSC, FMSC's Cross-Claim against Respondent Michael Jay Strasser was moot.

Respondent Michael Jay Strasser did not appear at the evidentiary hearing in this matter. Pursuant to Rule 10318 of the Code, the Panel determined that Respondent Strasser received proper notice of the hearing and ruled to proceed in Mr. Strasser's absence.

The parties present at hearing 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Michael Jay Strasser is solely liable for and shall pay to Claimant, the sum of \$770,000.00 in compensatory damages.
- 2) Respondent Michael Jay Strasser is solely liable for and shall pay to Claimant, the sum of \$500.00 as reimbursement for Claimant's filing fee.
- 3) Respondent Michael Jay Strasser is solely liable for and shall pay to Claimant, the sum of \$2,583.73 in costs.
- 4) Respondent Michael Jay Strasser is solely liable for and shall pay to Claimant, the sum of \$37,441.00 in attorney's fees.
- 5) Claimant's claim for punitive damages is denied.
- 6) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$500.00
Cross-claim filing fee	= \$2,000.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, FMSC is a party and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$5,000.00
Total Member Fees	= \$8,550.00

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$3,600.00
Pre-hearing conferences:	
June 30, 2003	1 session
September 29, 2003	1 session
March 15, 2004	1 session

(1) Hearing session @ \$1,200.00/session	= \$1,200.00
Hearing:	
August 17, 2004	1 session

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<b>Total Forum Fees</b>	<b>= \$4,800.00</b>
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The Panel assessed \$1,800.00 in forum fees to Claimant.

The Panel assessed \$1,800.00 in forum fees to Respondent Michael Jay Strasser.

The Panel waived the \$1,200.00 forum fee in connection with the pre-hearing conference held September 29, 2003.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 1,800.00
Total Fees	= \$ 2,300.00
Less Payments	= \$ (1,700.00)
Balance Due NASD-DR	= \$ 600.00

2. Respondent FMSC is charged with the following fees and costs:

Cross-Claim Filing Fee	= \$ 2,000.00
Member Fees	= \$ 8,550.00
Total Fees	= \$ 10,550.00
Less Payments	= \$(11,750.00)
Refund Due FMSC	= \$( 1,200.00)

3. Respondent Michael Jay Strasser is charged with the following fees and costs:

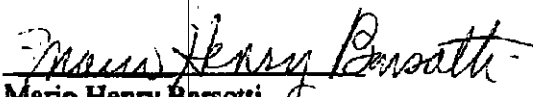
Forum Fees	= \$ 1,800.00
Less Payments	= \$( 0.00)
Balance Due NASD-DR	= \$ 1,800.00

All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Mario Henry Barsotti	-	Public Arbitrator, Presiding Chair
Bruce T. Mitchell, Esq.	-	Public Arbitrator
Thomas A. Thornhill, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Mario Henry Barsotti  
Chair, Public Arbitrator

  
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Signature Date

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Bruce T. Mitchell, Esq.  
Public Arbitrator

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Signature Date

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Thomas A. Thornhill, Jr.  
Non-Public Arbitrator

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Date of Service

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Arbitration No. 02-06787  
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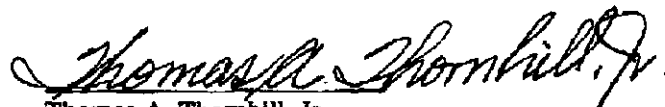
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