

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Fimat USA, Inc. (Claimant) v. Pro-Vest Capital Corp. and George Fontanills (Respondents)

Case Number: 04-01158

Hearing Site: New York, New York

Nature of the Dispute: Member vs. Customers.

REPRESENTATION OF PARTIES

Claimant Fimat USA, Inc. hereinafter referred to as "Claimant": Hank L. Goldsmith, Esq., Proskauer Rose, LLP, New York, NY.

Respondents Pro-Vest Capital Corp. ("Pro-Vest") and George Fontanills ("Fontanills") hereinafter collectively referred to as "Respondents": Michael H. Smith, Esq., Rosenberg Feldman Smith, LLP, New York, NY. Previously represented by: Michael H. Smith, Esq., Todtman, Nachamie, Spizz & Johns, P.C., New York, NY and Gustavo J. Membiela, Esq., Hunton & Williams, LLP, Miami, FL.

CASE INFORMATION

Statement of Claim filed on or about: February 20, 2004.

Reply to Respondents' Counterclaims filed by Claimant on or about: May 10, 2004.

Claimant signed the Uniform Submission Agreement: February 20, 2004.

Joint Statement of Answer, Defenses, and Counterclaims filed by Respondents on or about: April 23, 2004.

Respondent Pro-Vest signed the Uniform Submission Agreement: May 18, 2004.

Respondent Fontanills signed the Uniform Submission Agreement: March 25, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; failure to meet margin calls; and failure to honor the Guaranty. The causes of action relate to securities options, options on futures, and futures.

Unless specifically admitted in its Reply to Respondents' Counterclaims, Claimant denied the allegations made in the Counterclaims and asserted various affirmative defenses.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In their Counterclaims, Respondents asserted the following causes of action: fraud in the inducement; breach of contract; breach of covenant of good faith and fair dealing; breach of fiduciary duty; failure to supervise; churning; and negligence.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$6,000,000.00; interest; costs and expenses; attorneys' fees; and such other and further relief as the Panel deems just and proper.

In its Reply to Respondents' Counterclaims, Claimant requested dismissal of all Counterclaims asserted by Respondents; entry of an award against Respondents, including costs and attorneys' fees and such further relief as the Panel may deem just and proper.

Respondents requested dismissal of all claims against Respondents; entry of a judgment against Claimant; and such further relief as the Panel deems just and proper.

In their Counterclaims, Respondents requested compensatory damages and lost profits in excess of \$10,000,000.00; punitive damages; interest; costs and expenses; attorneys' fees; and such further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND 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.

AWARD

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

1. Respondents Pro-Vest and Fontanills are jointly and severally liable for and shall pay to Claimant compensatory damages and interest in the amount of \$1,428,506.00.
2. Respondents Pro-Vest and Fontanills are jointly and severally liable for and shall pay to Claimant attorneys' fees in the amount of \$326,855.00. The Panel awarded attorneys' fees based upon the contract between Claimant and Respondents.
3. Respondents Pro-Vest and Fontanills are jointly and severally liable for and shall pay to Claimant costs in the amount of \$22,092.00.
4. Respondents' counterclaims are denied in their entirety.

5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$2,500.00
Counterclaim filing fee	= \$ 600.00

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. Accordingly, Fimat USA, Inc. is a party.

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 26, 28, 2004, adjournment by Respondents	= \$1,200.00
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Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: September 14, 2004 1 session	

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: August 9, 2004 1 session	

Ten (10) Hearing sessions @ \$1,200.00	= \$12,000.00
Hearing Dates:	
November 23, 2004	2 sessions
December 9, 2004	2 sessions
March 15, 2005	2 sessions
March 16, 2005	2 sessions
April 20, 2005	2 sessions

Total Forum Fees	= \$13,650.00
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1. The Panel has assessed \$6,825.00 of the forum fees against Claimant.
2. The Panel has assessed \$6,825.00 of the forum fees jointly and severally against Respondents Pro-Vest and Fontanills.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 2,500.00
Member Fees	= \$ 9,600.00
Forum Fees	= \$ 6,825.00
Total Fees	= \$18,925.00
Less payments	= \$13,300.00
Balance Due NASD Dispute Resolution	= \$ 5,625.00

2. Respondents are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 6,825.00
Total Fees	= \$ 8,625.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 6,825.00

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

ARBITRATION PANEL

Joseph J. Arata, Esq.	-	Public Arbitrator, Presiding Chairperson
Susan C. Lushing, Esq.	-	Public Arbitrator
Richard D. Chusid, Esq.	-	Non-Public Arbitrator

Concurring 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.



Joseph J. Arata, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Susan C. Lushing, Esq.
Public Arbitrator

Signature Date

Richard D. Chusid, Esq.
Non-Public Arbitrator

Signature Date

May 27, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

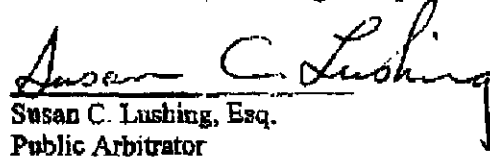
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