

NATIONAL ASSOCIATION OF SECURITIES DEALERS. INC.

In The Matter of The Arbitration Between

Imre J. Takats

Claimant/
Counter-
Respondent

Award

vs.

NASD #88-01967

Merrill Lynch, Pierce, Fenner &
Smith, Inc.

Respondent/
Counter-
Claimant

SUMMARY OF ISSUES

Claimant Imre J. Takats filed this action on June 20, 1988 against Merrill Lynch, Pierce, Fenner & Smith, Inc., for violations of the margin requirements of Regulation T under which he alleges a private cause of action and for breach of contract. Claimant alleged that Merrill Lynch authorized him to trade on margin in excess of 50% in violation of Regulation T by allowing him to maintain his account as of September 25, 1987 at a margin of 67.25%. Claimant further alleged that Merrill Lynch failed to give him proper notice to meet a margin call in the amount of \$18,000.00 on October 27, 1987 in violation of Regulation T by requiring him to meet a margin call within three hours instead of giving him notice of seven days. Additionally, Claimant alleged that a margin call payment agreement was reached between the parties in that he was always given 5 days to respond to margin calls and that Respondent breached this agreement on October 27, 1987 when it liquidated the securities held in his account. Additionally, Claimant alleged that Merrill Lynch breached the written margin account agreement between the parties as it had been modified by the parties in their course of dealing. Additionally, Claimant alleged that an agreement had been reached on October 8, 1987 requiring specific payments and, that even though he made such payments, Merrill Lynch breached such agreement.

Respondent Merrill Lynch denied each and every allegation and maintained that Claimant does not have a

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private cause of action for alleged violations of margin regulations. Respondent maintained that Regulation T deals only with initial margin requirements and is not applicable to the situation presented by Claimant. Respondent further maintained that on October 27, 1987 Claimant was advised that he would have to meet a maintenance/margin call by 11:00 a.m. that day, whereby Claimant informed Respondent that he was unable to do so; as a result, and in accordance with the Margin Agreement between the parties, the securities in the account were then liquidated by Respondent. Respondent Merrill Lynch brought a counter-claim against Claimant and alleged damages resulting from an unsecured debit balance due and owing.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages equal to the present value of his securities portfolio less the value of the securities liquidated on October 27, 1987; as of January 7, 1988 Claimant calculated damages in the amount of \$9,016.83 but requested that damages awarded be calculated at the time of this arbitration which Claimant stated amounted to \$11,944.21, plus interest until paid and reasonable costs and attorneys' fees.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., requested dismissal of the claim; and an award of reasonable costs and attorneys' fees. Respondent further requested damages on its counter-claim in the amount of \$3,719.95 for the debit balance due, interest at 12% from October 27, 1987 until date paid, and reasonable costs and attorneys' fees.

DAMAGES AND RELIEF AWARDED

On June 21, 1989 in a double session hearing held in Seattle, Washington, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Imre J. Takats on May 27, 1988 and by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., on July 3, 1988. The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing and the post-hearing submissions filed on behalf of both parties, has determined in full and final resolution of the issues submitted for determination as follows:

1. Each and every claim against Merrill Lynch, Pierce, Fenner & Smith, Inc. is hereby dismissed.

2. Counter-respondent Imre J. Takats is hereby liable for and shall pay to Counter-claimant Merrill Lynch, Pierce, Fenner & Smith, Inc., the sum of Three-Thousand, Seven-Hundred, Nineteen Dollars and Ninety-Five Cents representing the debit balance due and owing.

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3. Counter-respondent is further liable for and shall pay to Counter-claimant interest at the rate of twelve (12) percent on the sum of \$3,719.95 from the period of October 27, 1987 until the award is paid.

4. The parties shall each bear their respective costs including attorneys' fees.

5. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall retain the \$200.00 filing fee previously deposited by the Claimant, and shall refund to the Claimant the sum of \$200.00 representing over-payment of the initial filing fee required.

OTHER ISSUES

ARBITRATOR CONCURRING

DATE SERVED: 08/01/89


KENNETH A. MILLER

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