

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Robert T. Walker

Claimant

vs.

Shearson Lehman Brothers, Inc.  
and William Zimmer

Respondents

CASE NO. 88-02630

SUMMARY OF ISSUES

Claimant filed this claim with the NASD on August 18, 1988 and alleged that the increased margin requirement imposed by Respondent on Claimant's position of one April 15 nickel contract constituted a breach of fiduciary duty, a breach of contract, and an unfair business practice. Claimant further alleged that as a result of the increased margin requirement for which he was given 48 hours to comply with, Claimant was forced to liquidate his position against his wishes prior to the expiration date for the contract.

Respondent maintained that it had an absolute contractual right under the terms of the executed Commodity Client Agreement to increase margin requirements at its discretion and as a matter of business judgment as a futures commission merchant. Additionally, Respondent maintained that the increased margin requirement was reasonable and justified under the existing market conditions surrounding nickel futures contracts on the London Metal Exchange. Respondent further maintained that Claimant voluntarily liquidated his position 24 hours before the deadline established by Respondent and failed to mitigate his alleged damages by re-entering the market.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages for lost opportunity, as amended at the hearing, in the amount of \$70,464.00 representing the peak market price after liquidation, or alternatively, \$47,304.00 representing the contract price at expiration. Additionally, Claimant requested interest at the legal rate from the date of loss, attorneys' fees and costs.

Respondent requested dismissal of the claim in its entirety.

DAMAGES AND RELIEF AWARDED

On October 27, 1989 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on June 28, 1988 and by Respondent Shearson Lehman Hutton, Inc. on January 27, 1989. The hearing was held in Los Angeles, California and

lasted two (2) sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. All claims are hereby dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.
3. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure, the NASD shall retain the \$500.00 filing fee previously deposited by the Claimant.

#### OTHER ISSUES

Claimant withdrew all claims against William Zimmer prior to the hearing.

The parties stipulated to the execution and service of the award in counterpart copies.

#### ARBITRATORS CONCURRING

DATE SERVED: 11/16/89

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William R. Newsome

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*Frank M. Hodgson*  
Frank M. Hodgson

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