



N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

I. Jacob Dahan

vs.

Case #
91-02028

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc

REPRESENTATION

For Claimant, I. Jacob Dahan, Bruce E. Falby, Esq. of the law firm of Hill & Barlow.

For Respondent, Merrill Lynch, Pierce, Fenner & Smith Inc., Charles L. Henderson, Esq. of Merrill Lynch, Pierce, Fenner & Smith Inc.

CASE INFORMATION

Statement of Claim filed on June 27, 1991.

Claimant's Response to Respondent's Counterclaim dated October 11, 1991.

Claimant's Submission Agreement signed on June 24, 1991.

Statement of Answer and Counterclaim filed by Respondent on September 9, 1991.

Respondent's Submission Agreement signed on August 28, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: May 21, 1992, 2 Sessions.

June 16, 1992, 2 Sessions.

June 17, 1992, 2 Sessions.

Hearing Location: National Association of Securities Dealers, Inc. ("NASD") offices in Boston, Massachusetts.

CASE SUMMARY

Claimant alleged that on January 9, 1991 he placed an order with Respondent to purchase 10 February 1991 oil futures contracts at \$24.50. Claimant further alleged that when he placed the order the price of oil futures contracts was less than \$24.50 and that the price of the oil futures rose to

\$24.50 at 1:57 p.m. Claimant further alleged that Respondent filled the order at 2:00 p.m. at \$30.00. Claimant further alleged that Respondent mishandled his order by improperly filling the order and by not informing Claimant that the order had been filled until almost 3:00 p.m, almost an hour after the trade.

Respondent maintained that execution of Claimant's order was fair given the unprecedented volatility in the oil futures market at the time the order was placed and that Claimant was informed of the execution price once his broker with Respondent learned of the execution price. Respondent alleged as affirmative defenses that the Statement of Claim failed to state claims upon which relief could be granted, that the Statement of Claim failed to particularize facts establishing a legal theory upon which Respondent could be liable, that Claimant made all investment decisions and authorized and approved the trade prior to execution, and that Respondent acted properly, in good faith and in accordance with applicable rules and regulations. Respondent alleged in a counterclaim that Claimant had a debit balance of \$5,057.33 in his futures account with Respondent. Respondent further alleged that under the Futures Customer Agreement Claimant entered into with Respondent on July 30, 1990, Claimant was liable to Respondent for any debit balance owing in his account with Respondent. Respondent further alleged that Claimant had failed to make any payment towards his debit balance.

Claimant in his response to the counterclaim denied that he was liable to Respondent for the debit balance of \$5,057.33 under the Futures Customer Agreement. Claimant alleged as affirmative defenses that the counterclaim failed to state a claim upon which relief could be granted, that Respondent caused the loss through its own negligence and mishandling of Claimant's account, that Respondent's conduct breached the Futures Customer Agreement, and Respondent was estopped by its own conduct from recovering on its counterclaim.

RELIEF REQUESTED

Claimant requested that Respondent be ordered to pay over to Claimant the sum of \$16,531.98, which was improperly deducted from his account by Respondent, plus interest from the date it was deducted. Claimant further requested that he be awarded the profit he would have received on the transaction if it had been properly executed, attorneys fees, costs and any such other and further relief as the arbitrators deem just and appropriate. Claimant requested that the panel dismiss Respondent's counterclaim and award him attorneys' fees, costs and expenses incurred in defense of the counterclaim.

Respondent requested that the panel dismiss Claimant's claims and that it be awarded attorneys' fees, costs, and expenses in defense of the arbitration. Respondent further requested that it be awarded \$5,057.33, the debit balance in Claimant's account, plus interest, costs and fees.

OTHER ISSUES CONSIDERED & DECIDED

The chairman of the arbitration panel considered Claimant's motion to compel production of information and documents, and Respondent's objection to Claimant's motion, and decided that Respondent would supply information and documents containing or referring to Respondent's policies, practices, and/or procedures for the handling of orders to buy or sell oil futures contracts on the New York Mercantile Exchange. The Claimant's remaining requests for information were denied.

On the last day of the hearing, Respondent's witness Gary Lapyover testified. The direct examination of Mr. Lapyover was completed but during the lunch break Mr. Lapyover took ill and was hospitalized and therefore his cross examination was not completed. The parties, therefore, agreed to have his testimony stricken.

AWARD

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

1. The claims by the claimant against the respondent are hereby dismissed.
2. This panel finds for Respondent on Respondent's counterclaim. Therefore Claimant is liable to Respondent for Five Thousand Fifty Seven Dollars and Thirty Three Cents (\$5,057.33) representing the debit balance plus Nine Hundred and Forty Seven Dollars and Seventy Two Cents (\$947.72) representing interest at a rate of twelve percent (12%) from January 9, 1991 to the hearing date.
3. All requests for attorneys' fees are denied.

FORUM FEES


Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1. Claimant is assessed a non-refundable filing fee of \$100.00.
2. Respondent is assessed a non-refundable filing fee of \$500.00.
3. Forum fees in the amount of \$1,800.00 for 6 hearing sessions at \$300.00 per session are to be borne by the Claimant.
4. Claimant deposited \$400.00 with the NASD and shall receive a credit for that amount.

5. Respondent deposited \$1,100.00 with the NASD.
6. Therefore, the total amount due by Claimant is \$1,500.00. Claimant shall pay Respondent the sum of \$600.00 to reimburse Respondent and the balance of \$900.00 to the NASD to represent forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature



John A. Scudiero
Public

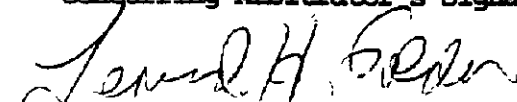
Executed on
~~Date of Decision:~~ 10/21/92

Date of Decision: October 29, 1992

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Concurring Arbitrator's Signature

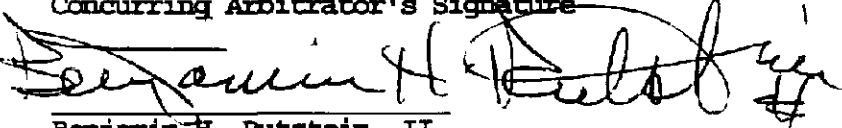

Leonard H. Golder, Esq.
Chairperson - Public

Date of Decision: October 29, 1992


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Concurring Arbitrator's Signature


Benjamin H. Rutstein, II
Industry

Date of Decision: October 29, 1992

SIGNATURE GUARANTEED
JOSEPH TAL & CO., INCORPORATED
By 
.....
AUTHORIZED SIGNATURE
(PENDING RESOLUTIONS FILED
NEW YORK STOCK EXCHANGE)