

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ernst & Company

NASD Arbitration
No. 92-02141

Name of Respondent

Glen C. Farkas

REPRESENTATION

For Claimant: Michael H. Du Boff, Esq. - Salon, Marrow & Dyckman - New York

For Respondent: Morgan Bentley, Esq. - Newark, New Jersey

CASE INFORMATION

Statement of Claim filed: June 26, 1992

Claimant's Submission Agreement signed: June 25, 1992

Statement of Answer and Counterclaim filed by Respondent: September 18, 1992

HEARING INFORMATION

Pre-Hearing Conference: None

Hearing Date/Sessions: January 21, 1992 - One Session
January 22, 1992 - Two Sessions

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant, Ernst & Co. (Ernst), alleged that Respondent, Glen C. Farkas (Farkas), ordered the execution of a transaction of certain OEX puts through Ernst, and that Ernst had to liquidate a position in Farkas' account when payment was not received.

Respondent, Farkas, alleged that the payment was offered prior to the liquidation of the position and that, by way of a counterclaim, alleged that Ernst used the liquidation of the 800 OEX 385 puts to its own benefit.

RELIEF REQUESTED

Claimant, Ernst, requests an award in its favor in the sum of \$79,356.75 together with interest, costs and attorneys' fees.

Respondent, Farkas, dismissal of the claim in its entirety and damages in excess of \$150,000.00 plus costs attorneys' fees and punitive damages.

OTHER ISSUES CONSIDERED & DECIDED

Claimant, Ernst, filed a motion to change the situs for the hearing from Los Angeles to New York. Said motion was denied.

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. In either case, the parties have agreed to receive conformed copies of the Award while the original remain on file with the NASD.

AWARD

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

The arbitrators have concluded that neither Claimant nor Respondent intended harm towards the other. Each was attempting to protect its or his own interests and neither was attempting to take unfair advantage of the other. Lack of direct communication between the principals was the cause of this dispute. Therefore, the arbitrators rule as follows:

1. Respondent, Glen C. Farkas, shall pay to Claimant, Ernst & Company, the sum of \$79,356.75, plus interest on that amount at the rate of 9% per annum from May 4, 1992, until paid in full.
2. Claimant and Counter-Respondent, Ernst & Company, shall pay to Respondent/Counter-Claimant, Glen C. Farkas, the \$25,627.00 profit that Ernst made on its hedge against Respondent's position, plus interest on that amount at the rate of 9% per annum until paid in full.
3. No punitive damages are awarded.
4. Each party shall bear its own costs and fees, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed:

Claimant is assessed forum fees in the amount of \$300.00 representing one-half of the \$1,800.00 assessable for three sessions at \$600.00 each, less the \$600.00 hearing session deposit.

Respondent is assessed forum fees in the amount of \$900.00 representing one-half of the assessment.

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

ARBITRATORS

Public/Industry
Public Chairperson
Public Panelist
Industry Panelist

es



Served 3/16/93

Date of Decision: _____