

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
AWARD**

In the Matter of the Arbitration Between

MERRILL LYNCH, PIERCE, FENNER &
SMITH, INC.,

Claimant,

v.

NASD No. 94-00026

JOSEPH BRONSON

Respondent.

Representation

For Claimant: Thomas Taylor, Esq. of Jones, Bell, Simpson & Abbott,
Los Angeles, California

For Respondent: Jeffrey Benice, Esq. of Benice & Associates,
Irvine, California

Case Information

Statement of Claim filed: December 16, 1993

Claimant's Submission Agreement signed: January 26, 1994

Statement of Answer filed on: April 29, 1994

Statement of Answer and Counterclaim filed on: April 5, 1994

Respondent's Submission Agreement signed on: April 6, 1994

Hearing Information

Prehearing Conference Date(s)/Sessions: None

Hearing Date/Sessions: February 16, 1995/one, February 24, 1995/two

Hearing Location: Los Angeles, California

Case Summary

Claimant alleged:

Breach of contract for failure of Respondent Joseph Bronson (Bronson) to cure the debit balance in his securities account. Bronson opened a futures trading account with Claimant Merrill Lynch, Pierce, Fenner & Smith (ML) on October 19, 1992. He indicated that he had 10 to 20 years experience in futures trading and net worth of \$1,000,000, exclusive of his home. Pursuant to the terms of the Account Agreement, Bronson agreed to remain liable for and to pay ML upon demand any debit balance owing in his account.

Between June and July 1993 Bronson purchased sugar futures and received a maintenance call on July 7, 1993 and another on July 9, 1993. He agreed to send full payment repeatedly but never did so and his positions were liquidated, with a remaining debit balance of \$24,725.85.

Respondent denied each and every allegation of wrongdoing in the Claim and alleged in his Answer and Counterclaim:

Failure to state a claim, estoppel, waiver, laches, unclean hands, conditions precedent concurrent and subsequent, performance excused by material breach, implied covenants of good faith and fair dealing, comparative bad faith, set-off and failure to mitigate.

Respondent's Counterclaim alleged unauthorized trading, churning and fraud. Bronson expressly advised that his prior approval had to be obtained for all purchases. The sugar futures purchases were unauthorized, causing Bronson to lose in excess of \$100,000 and causing improper maintenance calls.

Claimant denied all allegations of the Counterclaim and alleged:

Bronson was and is an affluent, sophisticated investor who fully understood the futures purchased. He made his own investment decisions including the decision to invest in sugar futures. ML fully and accurately disclosed all facts pertaining to his investments, including the risks associated with trading commodities.

Relief Requested

Claimant requested:

1. Principal damages of \$24,725.85;
2. Interest on the principal amount at the legal rate of 10% per annum from and after July 9, 1993;
3. For costs incurred in bringing this suit;
4. Such further relief as deemed just and equitable.

Respondent requested:

1. Principal damages of no less than \$125,000;
2. Interest at the rate of 10% from and after July 1993;
3. Costs, including attorneys' fees;
4. Such further relief as deemed appropriate.

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

Upon opening the hearing on February 16, 1995, Respondent's counsel requested that the matter be continued to February 24, 1995 because he had been advised the previous day that he had been set for trial in federal district court on February 16. With the stipulation by Respondent's counsel that Respondent would reimburse Claimant for round-trip expenses incurred in bringing its witness, Charles Pease, from San Francisco, the panel granted the continuance.

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:

1. Each and every Counterclaim of Respondent Bronson is dismissed;
2. Respondent Joseph Bronson is liable for and shall pay Claimant \$24,725.85 and interest on the principal amount for the period July 9, 1993 through February 24, 1995 of \$4,207;
3. The parties shall each bear their respective attorney's fees;
4. The parties shall each bear their respective costs.

Other Costs

None.

Forum Fees

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall refund the \$500 hearing session deposit previously paid by the claimant. Forum fees are assessed against:

Respondent Joseph Bronson for \$2,250,

calculated as follows: three hearing sessions at \$750/hearing session, based on the \$125,000 Counterclaim filed by Respondent, equals \$2,250.

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

Arbitration Panel

Name

Public/Industry

Frank Smith
William Richardson
Robert Granas

Public Arbitrator
Industry Arbitrator
Public Arbitrator

Concurring Arbitrators' Signatures



Frank Smith

William Richardson

Robert Granas

Date Served: 3/14/95

Date of Decision: