

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Frank M. Smith

and

96-04769

Name of Respondent

Currency Trading International, Inc.

Marie Fine

John Doe

### **REPRESENTATION OF PARTIES**

Frank M. Smith ("**Claimant**") was represented by Francis V. Cristiano, Esq. And Richard A. Nervig, Esq., Cristiano & Nervig, Denver, Colorado.

Currency Trading International, Inc. ("**Respondent CTI**") was represented by Thom Blodgett, Esq., Irvine, California. Mr. Blodgett was present at the hearing on behalf of his client.

Marie Fine ("**Respondent Fine**") did not appear at the hearing.

John Doe ("**Respondent Doe**") did not appear at the hearing.

### **CASE INFORMATION**

The Statement of Claim was filed on or about October 15, 1996. Submission Agreement of Claimant Frank M. Smith was signed on October 15, 1996.

By letter dated July 18, 1997, Respondent Currency Trading International, Inc. refused to participate in the arbitration of this matter.

Respondent Marie Fine did not file a responsive pleading.

### **HEARING INFORMATION**

The hearing was held on December 16, 1997 in Denver, Colorado for a total of two (2) sessions.

### CASE SUMMARY

Claimant alleged that Respondents Marie Fine and John Doe, employees of Respondent Currency Trading International, Inc., induced him to make investments in highly speculative currency options, despite the lack of investment experience and his low annual income. Claimant alleged that these Respondents induced him by encouraging him to track hypothetical investments in currency options and showing him retrospectively how much money he would have made. It was also alleged that Respondents encouraged the Claimant to invest cash advances from his credit card accounts to leverage his account and invest by margin.

Respondent CTI did not file a responsive pleading and chose not to participate in the hearing. By letter dated July 18, 1997, Respondent CTI refused to participate in the arbitration of this dispute. The letter stated the following reasons for the refusal:

- ▶ Currency Trading International, Inc. is not a member of the NASD.
- ▶ There is no contract between Mr. Smith and Currency Trading International, Inc. that allows or requires arbitration of disputes between parties.
- ▶ There is no contract between the NASD and Currency Trading International, Inc. that requires arbitration.
- ▶ The NASD Code of Arbitration Procedure Rule 10301 applies to NASD members not ex-members.
- ▶ Currency Trading International, Inc. has not filed a Uniform Submission Agreement.

### RELIEF REQUESTED

Claimant requested an award in the total amount of \$37,380.35, plus general damages for emotional distress, exemplary damages, costs and interest.

### OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Marie Fine has been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Marie Fine had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Claimant requested leave to amend the Statement of Claim to include a claim under the Colorado Consumer Protection Act CRS §6-1-101 et. seq. which was granted by the panel.

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(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

### **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. Respondents Currency Trading International, Inc. and Marie Fine shall be and hereby are jointly and severally liable for and shall pay to the Claimant Frank M. Smith the sum of \$35,181.53 (thirty five thousand one hundred eighty one dollars and fifty three cents).
2. Interest at the rate of 8% per annum is awarded on the above stated sum from and inclusive of December 16, 1997 to and inclusive of the date this award is paid in full.
3. Respondents Currency Trading International, Inc. and Marie Fine shall be and hereby are jointly and severally liable for and shall pay to the Claimant Frank M. Smith the sum of \$39,774.46 (thirty nine thousand seven hundred seventy four dollars and forty six cents) as punitive damages. The undersigned arbitrators find that they have the authority to award punitive damages under state law. In addition, the undersigned arbitrators find that the actions of Respondents were in wilful and wanton and reckless disregard of Claimant's rights.
4. Respondents Currency Trading International, Inc. and Marie Fine shall be and hereby are jointly and severally liable for and shall pay to the Claimant Frank M. Smith the sum of \$750 (seven hundred fifty dollars) as reimbursement for costs.
5. All other requests for relief shall be and hereby are denied, including but not limited to the requests for attorneys' fees and damages for emotional distress.

### **FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$400 = \$800 in forum fees. Pursuant to Rule 10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$120 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Frank M. Smith. Respondents Currency Trading International, Inc. and Marie Fine shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$400 as the balance due for forum fees.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **assess** the non-refundable member surcharge in the amount of \$200 against Respondent Currency Trading International, Inc. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Dennis R. Frohlich, Esq.

January 4, 1998

Dennis R. Frohlich, Esq.

Public Arbitrator, Presiding Chair

/s/ Ronald G. Guida

December 27, 1997

Ronald G. Guida

Public Arbitrator

/s/ James C. Collings

January 14, 1998

James C. Collings

Industry Arbitrator