

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Names of Claimants

John B. Kellenyi
David S. Chao

Case No.
96-05306

Names of Respondents

Commodities Corporation, Limited
Hamilton Partners, Limited

REPRESENTATION

For Claimants John B. Kellenyi ("Kellenyi") and David S. Chao ("Chao") (collectively referred to as "Claimants") appeared M. Christine Carty, Esq. and Benjamin P. Deutsch, Esq. of the law firm Schnader Harrison Segal & Lewis, LLP, located in New York, New York.

For Respondents Commodities Corporation, Limited ("CC(USA)") and Hamilton Partners, Limited ("Hamilton") (collectively referred to as "Respondents") appeared John K. Bennett, Esq. and Pamela Davis-Clarke, Esq. of the law firm Carpenter, Bennett & Morrissey, located in Newark, New Jersey.

CASE INFORMATION

Claimants' Statement of Claim was filed on November 19, 1996. Claimant Kellenyi's Submission Agreement was signed on November 27, 1996. Claimant Chao's Submission Agreement was signed on November 27, 1996.

A Joint Statement of Answer was filed by Respondents on January 27, 1997. Respondent CC(USA)'s Submission Agreement was signed on January 24, 1997. Respondent Hamilton's Submission Agreement was signed on January 21, 1997.

HEARING INFORMATION

Hearing Dates/Sessions:	July 31, 1997	-	Two Sessions
	September 12, 1997	-	Two Sessions
	November 13, 1997	-	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimants alleged that they are former employees of Respondent CC(USA), where Kellenyi was the senior analyst and Chao was the equity trader of a Utility Hedge Portfolio Group (the "Utility Group") which traded on behalf of Hamilton. Claimants further alleged that, under their respective employment contracts (the "Contracts"), they were entitled to terminate their contracts within sixty days of notification by Respondent CC(USA) that the total capital of Hamilton Partners declined to a level which increased the capital requirements of Claimants' trading portfolio as a result of "concentration haircuts". Claimants contended that, in such an event, Respondent CC(USA) was obligated under the terms of the Contracts to pay Claimants the currently accrued incentive compensation, that is, incentive compensation earned since the last quarterly payment.

Claimants alleged that, on April 1, 1996, they received notice that, after the close of business on the last day in March, the total capital of Respondent Hamilton was reduced by \$60 million. Claimants further alleged that this reduction in capital caused excess concentration haircuts, which, in turn, increased the capital requirements (margin requirements) of the Utility Portfolio. Claimants asserted that, on May 3, 1996, they resigned pursuant to the Contracts, and, on May 6, 1996, they requested payment of the currently accrued investment compensation, but Respondents have refused to pay their incentive compensation.

Respondents denied that Claimants were entitled to be paid any additional incentive compensation under their employment contracts. Respondents maintained that the intent of Claimants' revised employment contracts was to assure Claimants that the capital level available for their trading and their compensation would not be adversely impacted by the trading activities of another trader, Jeff Parket, and that Respondents would continue to provide them with ample capital to support their trading activities. Respondents also maintained that they have fulfilled both the letter and spirit of their obligations under Claimants' employment agreements, as at no time did any "concentration haircuts" effectively reduce the capital allocated to Claimants' trading activities or strategy or adversely affect their compensation. Respondents contended that, in early 1996, they allocated \$60 million to Claimant's trading strategy (\$15 million more than the \$45 million to which CC(USA) had committed in their employment contracts). Respondents further contended that, as of March 31, 1996, the date of the alleged triggering circumstance, Claimants were utilizing only approximately \$41.5 million of their allocated capital, even with the additional capital charged to their trading strategy. In addition, Respondents contended that Claimants' trading abilities and compensation were not at all affected by the March 31, 1996 transaction, which was merely a reinvestment of excess capital following the sale of Mr. Parket's convertible bond portfolio to Morgan Stanley, Mr. Parket's new employer.

Respondents further maintained that Claimants did not terminate their employment with CC(USA) because of any decline in Hamilton's capital and that Claimants' resignation was not triggered by any "concentration haircuts" increasing the capital requirements of their trading portfolio. Respondents contended that, rather, Claimants terminated their employment with CC(USA) because Respondents refused to accede to Claimants' May 3, 1996 demands that CC(USA) substantially alter the terms of their relationship. Respondents maintained that they

were justified in rejecting Claimants' demands, including taking the \$60 million in capital allocated to their trading portfolio and operating it themselves as a separate business entity, as those demands had been thoroughly discussed and previously rejected by Mr. Hillenbrand, President of CC(USA). Respondents also contended that Claimants engaged in bad-faith conduct in connection with their resignations by delivering an ultimatum after the close of business on Friday, May 3, 1996 that they would leave their portfolio immediately unless Respondents met their demands by the opening of business at 9:30 a.m. on Monday, May 6, 1996. Respondents further contended that Claimants' bad-faith maneuvering and self-dealing left Respondents overnight with trading positions in excess of \$230 million, without a senior trader to manage the portfolio, leading to substantial losses in May 1996.

RELIEF REQUESTED

Claimants requested accrued incentive compensation in the amount of \$252,383.00 for Claimant Chao and \$588,893.00 for Claimant Kellenyi, plus interest at the statutory rate from the date of default, May 18, 1996. Claimants also requested reasonable value for the time, energy and effort expended by Claimants which enabled Respondents' Utility Hedge Fund to earn net profits of \$4,673,757.00 for the period April 1, 1996 through May 3, 1996.

Respondents requested that the Statement of Claim be denied in its entirety, together with an award of costs, disbursements, attorneys' fees, and such other and further relief as the panel deemed just, proper and equitable.

OTHER ISSUES CONSIDERED & 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 original remains on file with the NASD.

AWARD

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

1. Respondents are hereby jointly and severally liable and shall pay to Claimant Kellenyi the sum of \$588,893.00 in compensatory damages, plus interest at the rate of 9% per annum from June 2, 1996 until the date of payment.
2. Respondents are hereby jointly and severally liable and shall pay to Claimant Chao the sum of \$252,383.00 in compensatory damages, plus interest at the rate of 9% per annum from June 2, 1996 until the date of payment.
3. Each party shall bear its respective costs, including attorneys' fees.
4. All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. will retain the \$500.00 non-refundable filing fee previously paid by Claimants, the \$1,000.00 postponement fee previously paid by Respondent Commodities, and the \$500.00 member surcharge previously paid by Respondent Hamilton. In addition, the arbitrators have assessed the following forum fees:

$$6 \text{ hearing sessions} \times \$1,000.00 = \$6,000.00$$

Forum fees are assessed against:

1. Claimants are hereby jointly and severally liable for the sum of \$3,000.00, representing one-half of the total forum fees assessed. Claimants previously deposited \$1,000.00 with NASD Regulation, Inc., therefore, Claimants shall jointly and severally pay the balance of \$2,000.00 to NASD Regulation, Inc.
2. Respondents be and hereby are jointly and severally liable for the sum of \$3,000.00, representing one-half of the total forum fees assessed.

Fees are payable to NASD Regulation, Inc.

Arbitrators' Signatures


Kevin C. Ahearn
Kevin C. Ahearn
Industry Arbitrator

Date of decision: February 12, 1998

I, Kevin C. Ahearn, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Kevin C. Ahearn
Kevin C. Ahearn

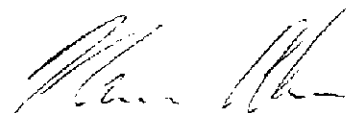
Arbitrators' Signatures



Nina Aber, Esq.
Industry Arbitrator

Date of decision: February 12, 1998

I, **Nina Aber, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Nina Aber, Esq.

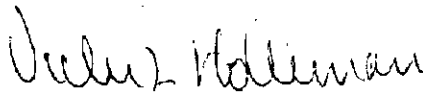
Arbitrators' Signatures



Vicki Z. Holleman, Esq.
Industry Arbitrator - Chairperson

Date of decision: February 12, 1998

I, Vicki Z. Holleman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Vicki Z. Holleman, Esq.