

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

J & K International Trading Corporation

and

96-05718

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

REPRESENTATION OF PARTIES

J & K International Trading Corporation ("Claimant") was represented by Harry S. Miller, Esq. and Matthew J. Tuttle, Esq., Perkins, Smith & Cohen, LLP., Boston, Massachusetts.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent") was represented by Bryan G. Killian, Esq. And A. Neil Hartzell, Esq., Sherin & Lodgen, LLP., Boston, Massachusetts.

CASE INFORMATION

The Statement of Claim was filed on or about December 24, 1996. Submission Agreement of Claimant J & K International Trading Corporation was signed on December 12, 1996 by Albert Jones.

Statement of Answer was filed by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on or about March 19, 1997. Submission Agreement of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. was signed on February 12, 1997 by John R. Cummings.

HEARING INFORMATION

A pre-hearing conference was held on November 26, 1997 for one (1) session, Thaddeus J. Tecza, Ph.D. presiding.

The hearing was held on Monday, December 8, 1997 for two (2) sessions, Tuesday, December 9, 1997 for two (2) sessions, Wednesday, December 10, 1997 for two (2) sessions and Thursday, December 11, 1997 for one (1) session in Denver, Colorado for a total of one (1) pre-hearing and seven (7) hearing sessions.

CASE SUMMARY

Claimant alleged that Respondent engaged in breach of contract, fraud, misrepresentation, brokerage firm mismanagement, negligence, breach of fiduciary duty, libel and slander, and interference with business relations. Specifically, Claimant stated that in or about the spring of 1992, Claimant opening a securities trading account with Respondent and advised the broker that Claimant would independently collect funds from a pool of investors and other separate entities (the Participants) and that each Participant would also open an account with Respondent. Claimant alleged that on or about April 19, 1994, Respondent froze the accounts of Claimant, suspending all trading in those accounts, and denying Claimant all access to the assets and funds in those accounts. Claimant alleged that Respondent wrongfully froze the accounts without any notice, explanation or justification. It was also alleged that during the time that the accounts were frozen, Respondent deprived Claimant of any opportunity to meaningfully manage those accounts. Claimant alleged that Respondent refused to permit Claimant to conduct trades in response to changes in the market or the needs of the Participants.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that it prohibited Claimant from withdrawing funds from the master accounts until its questions concerning the Participant s ownership and explanation of Claimant s transfers were answered. It was also stated that Respondent continued to request information from Claimant concerning the account and various Participants shares in J & K. Respondent also stated that Claimant either failed to respond or responded after lengthy delays. It was further stated that the accounts were not frozen as alleged and that liquidating transactions were always permitted.

RELIEF REQUESTED

Claimant requested an award in an amount in excess of \$500,000 for compensatory damages, unspecified punitive damages, unspecified consequential damages, unspecified market-adjusted damages, interest, attorneys fees and costs of arbitration.

Respondent requested that the arbitration panel dismiss the Statement of Claim and that costs be assessed against Claimant.

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(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. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall be and hereby is liable for and shall pay to the Claimant J & K International Trading Corporation the sum of \$429,361 (four hundred twenty nine thousand three hundred sixty one dollars) as compensatory damages. Interest at the rate of 6% per annum is awarded on this sum from the date of this award to and inclusive of the date this award is paid in full. The funds received pursuant to this provision are to be distributed among the participants of the 63 and 93 accounts to make whole their investments into these accounts. Any remaining funds up to \$79,000 will be distributed among the participants in proportion to their shares of total investments in the sum of the 63 and 93 accounts. Any additional remaining funds will be divided 50% to J & K International Trading Corporation and 50% divided among the participants in proportion to their share of the accounts.
2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall be and hereby is liable for and shall pay to the Claimant J & K International Trading Corporation the sum of \$75,000 (seventy five thousand dollars) as attorneys fees.
3. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall be and hereby is liable for and shall pay to the Claimant J & K International Trading Corporation the costs incurred to pursue this matter. Claimants are directed to submit an affidavit itemizing the costs incurred in this matter.
4. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) session x \$300 and were seven (7) sessions x \$1,000 = \$7,300 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 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution (the NASD) shall retain the non-refundable filing fee in the amount of \$250 and shall retain as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with the NASD by the Claimant J & K International Trading Corporation. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$6,300 as the balance due for forum fees.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD shall retain the non-refundable member surcharge in the amount of \$500 paid by Merrill Lynch, Pierce, Fenner & Smith, Inc. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ Thaddeus J. Tecza

December 11, 1997

Thaddeus J. Tecza, Ph.D.
Public Arbitrator, Presiding Chair

/s/ Arthur E. Otten, Jr.

December 11, 1997

Arthur E. Otten, Jr., Esq.
Public Arbitrator

/s/ Scott Steinhauer

December 11, 1997

Scott Steinhauer
Industry Arbitrator