

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In The Matter of The Arbitration Between

Roger Valmy

Claimant

Award

vs.

NASD #88-01667

Shearson Lehman Hutton, Inc.

Respondent

SUMMARY OF ISSUES

Claimant Roger Valmy filed this claim on May 23, 1988 against Shearson Lehman Hutton, Inc. for negligence and misrepresentation based upon the failure to disclose material information. Specifically, Claimant alleged that on December 14 and 15, 1987 upon the advice and recommendation of his account executive, he liquidated his entire position of 160 Western Union Telegraph Co., notes, 16% due on June 15, 1991. These sales were effected and confirmed to Claimant at prices which included accrued interest of \$12,800.00. By journal entry dated January 12, 1988, Claimant's account was debited the sum of \$12,000.00 and he was informed by Respondent that as of December 14, 1987 Western Union announced that it deferred interest payments on the notes for 30 days thus Claimant was not entitled to the accrued interest previously credited. Claimant alleged that in failing to disclose this information and advising him of all relevant facts, Respondent breached its duty to Claimant or acted negligently in failing to discover these facts.

Respondent Shearson Lehman Hutton, Inc. denied that it is at fault for any losses alleged and maintained that the decision and timing of the sales of the Western Union notes were entirely the Claimant's. Respondent further denied that it knew or should have known that Western Union was deferring its interest payment at the time the notes were sold.

DAMAGES AND RELIEF REQUESTED

Claimant requested that the sale transactions in the amount of \$117,177.50 be cancelled, the notes restored to his account subject to returning the sale proceeds, accrued interest in the amount of \$12,800.00; interest on all amounts awarded from the date of loss until paid; and costs and attorney's fees. Respondent requested dismissal of the claim in its entirety.

### DAMAGES AND RELIEF AWARDED

On—April 24, 1989 at a single session hearing in Los Angeles, California, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Roger Valmy on May 17, 1988 and by Respondent Shearson Lehman Hutton, Inc. on August 9, 1988. The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing, and the post-hearing submissions on behalf of both parties, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Shearson Lehman Hutton, Inc. is hereby liable for and shall pay to Claimant Roger Valmy the sum of Eleven-Thousand, Two-Hundred Dollars and Zero Cents (\$11,200.00).

2. Respondent is further liable for and shall pay to Claimant interest on the sum of \$11,200.00 at the rate of ten percent (10%) from January 12, 1988 to the date the award is satisfied.

3. All other claims are dismissed.

4. The parties shall each bear their respective costs including attorneys' fees.

5. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant. Respondent Shearson Lehman Hutton, Inc. is hereby assessed the sum of \$750.00 representing said filing fee and shall reimburse Claimant directly.

### OTHER ISSUES

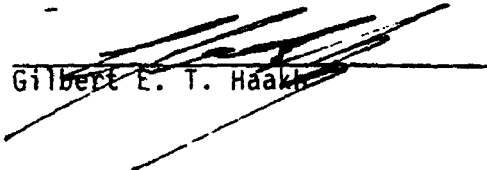
At the hearing in this matter, telephone testimony was given by a Senior Vice-President of the New York Stock Exchange ("NYSE") regarding the NYSE Circular dated December 15, 1987 regarding the Western Union notes in question which was received into evidence as Claimant's exhibit 2. Respondent requested and was given leave to file a post-hearing submission regarding this Circular. Respondent maintained that the Circular had no application on the trade in December 15, 1987 of the 20 remaining bonds and that the Claimant would not be entitled to interest on that sale because the bonds were flat. Respondent further maintained that the interest due Claimant was \$11,200.00.

Claimant filed a post-hearing submission in response and alleged that had the Respondent informed him of this publicly available information he could have sold all the bonds on the same day or kept the bonds and received both the price increase and the accrued interest. Claimant further requested an award of punitive damages assessed against Respondent.

The parties stipulated at the hearing in this matter to the execution and service of this award in counterpart copies.

ARBITRATOR CONCURRING

DATE SERVED: 08/01/89

  
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Gilbert E. T. Haack

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Howard A. Emirhanian

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John B. Wells

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