

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between

S. Milton Tolz

Claimant

vs.

Shearson Lehman Hutton, Inc.
Merrill Lynch Pierce Fenner & Smith, Inc.

Respondents

CASE #88-03331

AWARD

CASE SUMMARY

Claimant alleges Respondents failed to properly execute transactions in certain ESCOM South African Bonds. Respondent Merrill Lynch contends that since physical possession of the bonds could not be accomplished, it could not execute Claimant's instructions which Claimant was aware of. Further, Merrill Lynch contends that when Claimant purchased South African Bonds he assumed a risk that execution of orders on a third world bond might present problems. Further, that certain orders of the Claimant were in violation of the United States policy under the 1986 Comprehensive Anti-Apartheid Act.

Respondent Shearson Lehman Hutton, Inc. denies any wrongdoing and contends that since Shearson never received possession from Drexel Burnham Lambert, Inc., it could not process transactions requested. Further, that requested exchange of the bonds for similar securities of South Africa was prohibited by the 1986 Comprehensive Anti-Apartheid Act.

RELIEF REQUESTED

Claimant seeks \$18,914.50, plus costs, attorney's fees, punitive damages and interest. Respondents seek dismissal and costs.

PAGE 2
AWARD
88-03331

AWARD

On May 8th, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, S. Milton Tolz on October 27th, 1988, and by Respondent Shearson Lehman Hutton, Inc. on February 13th, 1989, and by Respondent Merrill Lynch Pierce Fenner & Smith, Inc. on February 24th, 1989. The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. in Philadelphia, PA and consisted of one (1) hearing session. The arbitrator, having considered the pleadings, the testimony, and the evidence presented at the hearing has determined in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator finds in favor of Respondent Shearson Lehman Hutton, Inc. and against Claimant S. Milton Tolz.
2. The Arbitrator finds in favor of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and against Claimant S. Milton Tolz.
3. The parties shall each bear their respective costs, including attorneys' fees.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$400.00 filing fee previously deposited by the Claimant, and assess \$400.00 against Respondents Shearson Lehman Hutton, Inc. and Merrill Lynch, Pierce, Fenner & Smith, Inc. jointly and severally.

CONCURRING ARBITRATOR

/s/ _____

Rafael A. Porrata-Doria Jr., Esq.

DATED: May 30, 1990