

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Sonarie, S.A.

Claimant

vs.

Merrill Lynch, Pierce, Fenner and Smith, Inc.

Respondent

Case #90-03197
AWARD

CASE SUMMARY

Sonarie, S.A. by Maurice Silberstein, Attorney-In-Fact, in a claim filed with the National Association of Securities Dealers, Inc. on November 13, 1990, alleged that Respondent failed, for over six weeks, to execute the transfer of Claimant's account to another broker. Claimant contends that Merrill Lynch failed to take action even when notified of that problem and was put on notice that damages might occur.

Claimant asserted a Motion to Preclude under Section 25 (b)(2)(iii) of the Code of Arbitration Procedure.

Respondent, Merrill Lynch, Pierce, Fenner and Smith, Inc. by their attorney, Christopher D. Cavuoti, Esq. maintained that on August 16, 1990, its agent, William Barbour, informed Claimant that in order to transfer a long position from their account, a transfer fee would have to be paid. Respondent asserts that said fee was not paid until October 15, 1990 and that the transfer was completed on October 23, 1990, six days later. Merrill Lynch states that they acted in a commercially reasonable manner, consistent with its obligations and responsibilities towards the Claimant.

Claimant replies that it never received a printout reinforcing that a fee had to be paid prior to any transfer. Claimant states that on August 16, 1990 no request for transfer had been made; therefore, no fee could have been due.

Respondent makes response to Claimant's reply that Claimant was made aware of the fifty dollar transfer fee by letter dated August 16, 90, not that a fee was due on that day. They affirm that Claimant was aware, or should have been aware that the fifty dollar transfer fee had to be paid before a transfer could have been effectuated.

Both Claimant and Respondent have submitted many letters concerning Claimant's Motion to Preclude. In addition to the initial Statement of Claim, the Claimant submitted pleadings on January 8, 1991, January 12, 1991, January 17, 1991, January 24, 1991, February 15, 1991, March 19, 1991, April 12, 1991 and May 6, 1991.

Respondent, in addition to the initial Statement of Answer submitted pleadings dated January 18, 1991, February 8, 1991, (two letters), March 8, 1991, April 3, 1991 and May 1, 1991.

RELIEF REQUESTED

Claimant requests Ten Thousand Dollars and No Cents (\$10,000.00) in damages.

Respondent requests that the Claim be denied in all respects and the costs of this proceeding assessed against the Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Herman R. Friedberg, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 7, 1990 and by the Respondent on January 7, 1991;

And, that the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. That the Respondent, Merrill Lynch, Pierce, Fenner and Smith, Inc. is liable and shall pay to the Claimant Sonarie, S.A. the sum of Five Thousand Seven Hundred Dollars and No Cents (\$5,700.00) plus ten percent (10%) interest from the date of this award.
2. The parties shall bear their respective costs including attorney's fees.

3. The One Hundred Fifty Dollar (\$150.00) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant is assessed against the Respondent and payable by the Respondent, Merrill Lynch, Pierce, Fenner and Smith, Inc. to Claimant, Sonaric, S.A.

AFFIRMATION

I, HERMAN R. FRIEDBERG, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

Herman R. Friedberg

Signature of Arbitrator May 30, 1991

DATED: 5/30/91