

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between	)	
	)	
<u>Name of Claimant(s)</u>	)	
	)	
Alicia Siduay De Shrem	)	
Marcos Shrem	)	
Emilio Shrem	)	
Antonio Shrem Siduay	)	
	)	Case No. 91-03320
	)	
<u>Name of Respondent(s)</u>	)	
	)	
Merrill Lynch Pierce Fenner & Smith Inc	)	
Shearson Lehman Hutton, Inc.	)	
Maria Healy	)	
Esteban Prellezo	)	

REPRESENTATION

For Claimants, Alicia Siduay De Shrem, Marcos Shrem, Emilio Shrem and Antonio Shrem Siduay ("the Shrem's"): Steven Reininger, Esq. of Rasco & Reininger, P.A.

For Respondents, Shearson Lehman Hutton, Inc. ("Shearson") and Maria Healy ("Healy"): Richard Martens, Esq. of Boose, Casey, Ciklin, et. al.

For Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill") and Esteban Prellezo ("Prellezo"): Todd Zuckmayer, Esq. of Merrill.

CASE INFORMATION

Statement of Claim filed: October 22, 1991 and Amended on April 27, 1992.  
Claimants' Submission Agreements signed: October 7, 1991.

Respondents, Shearson and Healy's, Statement of Answer filed: February 28, 1992 and Amended July 16, 1992. Respondents, Shearson and Healy's, Submission Agreements signed: November 3, 1992 by Healy, and on February 18, 1992 by James Goddard on behalf of Shearson.

Respondents, Merrill and Prellezo's, Statement of Answer filed: January 16, 1992. Respondents, Merrill and Prellezo's, Submission Agreements signed: January 15, 1992 by Prellezo and on January 14, 1992 by John Cummings on behalf of Merrill.

### HEARING INFORMATION

On October 28, 1992, in Fort Lauderdale Florida, a Pre-hearing Conference lasting one (1) session was conducted via telephone conference call with an arbitrator.

On November 3, 4 and 5, 1992, in Fort Lauderdale, Florida hearings lasting six (6) sessions were conducted.

### CASE SUMMARY

Claimants alleged that Respondents were liable for: breach of fiduciary duty; misrepresentation and omissions of material facts; violation of Chapter 517 Florida Statutes; negligence; and, breach of agreement. Claimants alleged that Respondents withheld information that certain bonds had been downgraded and were no longer investment grade and, therefore, not suitable for Claimants and, nevertheless, solicited Claimants to purchase said bonds.

Respondents, Shearson and Healy, denied all allegations of wrongdoing and alleged that: Claimants were advised that the bonds had been downgraded; Respondents advised Claimants to liquidate their positions; Claimants purchased additional shares contrary to Respondents advice; the decline in value was due to market conditions; and, Claimants were sophisticated investors.

Respondents, Shearson and Healy, asserted affirmative defenses including: failure to state a claim; assumption of risk; lack of reliance; failure to mitigate damages; lack of intent; waiver; acquiescence; estoppel; failure to exercise due care; and, the request for punitive damages violates the Florida and Federal constitutions and the laws of the state of New York.

Respondents, Merrill and Prallezo, denied all allegations of wrongdoing and alleged that: Claimants purchased the bonds in order to average down from their previous purchase at Shearson; the trade was unsolicited; Claimants were advised of the risk of default; and, Claimants are sophisticated investors.

Respondents, Merrill and Prallezo, alleged affirmative defenses including: failure to state a claim; estoppel; acquiescence; and, failure to mitigate damages.

### RELIEF REQUESTED

Claimants requested rescission and damages against Shearson and Healy in excess of \$300,000.00 plus interest, attorney's fees, costs, punitive damages, as well as rescission and damages against Merrill and Prallezo in excess of \$37,000.00 plus interest, attorney's fees, costs and punitive damages.

Respondents, Merrill and Prallezo, requested dismissal of the claim plus costs.

Respondents, Shearson and Healy, requested dismissal of the claim.

#### OTHER ISSUES CONSIDERED & DECIDED

1. 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 originals remain on file with the NASD.

#### AWARD

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

1. Respondents, Shearson, Healy, Merrill and Prellezo, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' requests for attorney's fees, costs and punitive damages are denied.
3. Respondents, Merrill and Prellezo's, request for costs is denied.

#### OTHER COSTS

1. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

#### FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,800.00 (one Pre-hearing Conference x \$300.00 plus six (6) sessions x \$750.00 per session).
2. Claimants are hereby assessed \$3,300.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$2,550.00.
3. Respondent, Shearson, is hereby assessed \$1,500.00 payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

/s/  
Nancy J. Cliff, Esq.

Public

/s/  
Richard P. Greene, Esq.

Industry

/s/  
Harold Alenick

Public

Date of Decision: November 25, 1992