

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Allen August :

Claimant :

vs. :

CASE #92-00084
AWARD

Merrill Lynch, Pierce, Fenner & Smith, Inc. :

Respondent :
-----CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 9, 1992, Claimant, Allen August, who appeared Pro Se, alleged that Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. failed to sell his 25,520 bonds of DR Holdings Senior Subordinated Debentures at the bid price of 49 1/2 received from Murphy and Company, a market maker in the bonds. Claimant further alleged that he instructed his broker, Tony Privatera with Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. to sell his entire position in the bonds at 49 1/2 and was advised that the traders at Respondent would only offer 45 for the bonds. Claimant contended that Respondent refused to give him more than 45 and refused to do the trade through Murphy and Company. Claimant further contended that Mr. Privatera's supervisor with Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. assured him that his bonds would be sold on the next trading day at the best possible price. Claimant asserted that on April 22, 1991, the next trading day, Murphy and Company's bid price was at 50 and Respondent again refused to offer the same bid but would only pay 48 for the bonds. Claimant further asserted that he received a letter from Respondent assuring him that the price they quoted "reflected the market at that time" and Claimant disputed this statement since he had sold 15,000 of these same bonds at Norstar Brokerage Corporation at a bid price of 50. Claimant argued that Respondent's failure to offer the same bid price as the other market maker caused him to incur losses.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. by and through their counsel Christopher D. Cavuoti, Esq. maintained that Claimant, Allen August owned a mixed odd-lot position, 25,520 face value, of Corporate High Yield bonds issued by DR Holding Corporation and that on April 19, 1991 Claimant asked his financial

consultant, Mr. Privetera, to solicit bids from Respondent's High Retail Trading Desk in order to sell his entire odd-lot position. Respondent further maintained that Mr. Privetera solicited bid prices from the High Yield Trading Area and they in turn, solicited bids from market makers in the security and relayed to the Claimant that the best bid price available was 45. Respondent contended that Claimant advised them that he had personally contacted a market maker, Murphy and Durieu, and received a bid price of 49 1/2, but did not indicate whether or not this price was for round-lots or odd-lots because bid prices are often slightly higher for sales of round-lot positions. Respondent further contended that the next trading day, Mr. Privetera once again solicited bid prices for Claimant's mixed-lot quantity and was advised the "best" current bid price available was \$48.00 per bond. Respondent asserted that Claimant again disputed Respondent's bid price, alleging he again solicited bid prices which were slightly higher and wished to sell his bonds for \$50.00 per bond, at which time, Mr. Privetera agreed to place an unsolicited limit order at \$50.00 to sell Claimant's DR Holdings bonds. Respondent further asserted that the trade was not executed at the \$50.00 limit price and Claimant was well aware that his limit price was above the best bid price obtained by Respondent and therefore, was unlikely to be executed. Respondent argued that at all times they sought to provide Claimant with the best available bid prices from market makers in the security and if Claimant believed he could obtain a more favorable price, he was free to transfer his position at any time, thus, mitigating his losses.

RELIEF REQUESTED

Claimant, Allen August requested \$10,000.00 in actual damages.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. requested the claim be denied and the cost of this proceeding be assessed against Claimant.

AWARD


Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Gary M. Landau, 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 December 19, 1991 and by the Respondent on February 19, 1992.

And, 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. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to the Claimant, Allen August the sum of \$510.40 in damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Allen August shall be retained by the NASD, Inc. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to the Claimant the sum of \$150.00 as reimbursement..

AFFIRMATION

I, GARY M. LANDAU, 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.



Signature of Arbitrator

DATE OF DECISION:

June 8, 1992

STATE OF: New York

SS:

COUNTY OF: KINGS

On this 21st day of May, 19 92, before me personally appeared GARY M. LANDAU, ESQ. to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Alta Parnass

Notary Public

KINGS 24-4911642

EXPIRES 10/15/93