

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between
Harris Lowenhaupt
Claimant
vs.
Shearson Lehman Brothers, Inc.
Respondent

CASE #92-00181
AWARD

In a claim filed with the National Association of Securities Dealers, Inc. on January 20, 1992, Claimant, Harris Lowenhaupt, who appeared Pro Se, alleged that Respondent, Shearson Lehman Brothers, Inc. breached its fiduciary duty when it failed to refund the Claimant additional monies which were not used in purchasing commodities of cobalt metal, and that the Respondent had promised it would return any unused funds to him. Claimant, Harris Lowenhaupt further alleged that he paid more than the prevailing prices for the commodities, and that Respondent, Shearson Lehman Brothers, Inc. received commissions, which the Claimant later learned he could have avoided if he'd worked directly with a trader.

Respondent, Shearson Lehman Brothers, Inc., through its in-house counsel Ann Parry, Esq., maintained that the contract to purchase the cobalt existed between the Claimant and Strategic Metals Corp. and that Shearson Lehman Brothers, Inc. was not a party to the contract, but only acted as agent in facilitating the transaction. Respondent, Shearson Lehman Brothers, Inc. further maintained that it earned its commission and should not be held liable for Strategic Metal Corp.'s failure to reimburse the Claimant.

Claimant, Harris Lowenhaupt filed a reply to the answer in which he reiterates his allegations and contends that his check, although made out to Strategic Metal Corp. was sent to Shearson Lehman Brothers, Inc., and that they should have maintained control beyond the point of extracting their commission.

RELIEF REQUESTED

Claimant, Harris Lowenhaupt requested \$5,410.00 in actual damages, plus return of his commission of \$2,563.00 paid to Respondent.

Respondent, Shearson Lehman Brothers, Inc. requested the claims of the Claimant be dismissed.

AWARD


Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Gerald D. Wygant, 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 January 14, 1992 and not by the Respondent, Shearson Lehman Brothers, Inc. as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

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. The claims of the Claimant, Harris Lowenhaupt against Respondent, Shearson Lehman Brothers, Inc. are dismissed in their entirety.
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 shall be retained by the NASD, Inc.

AFFIRMATION

I, **GERALD D. WYGANT, 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: JUL 22 1992