

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

U.K. & General Securities PLC
Phillip F.X. Fernandes
Brian S. Hershon
Melvyn P. Lesser
William F. Watson
Saaed Younis

93-01389

Name of Respondent(s)

Merrill Lynch Pierce Fenner & Smith Inc
Jeffrey C. Thompson

REPRESENTATION

For Claimants: Daniel H. Greenberg, Esq., New York, NY and William Pepper, Esq., United Kingdom.

For Respondents: Brian Amery, Esq., of the law firm of Bressler, Amery and Ross, Morristown, NJ.

CASE INFORMATION

Joint Statement of Claim filed: April 2, 1993.

Letter dated April 14, 1993 from Daniel H. Greenberg to William G. Haviland.

Letter dated May 3, 1993 from Daniel H. Greenberg to William G. Haviland with attachments.

Claimants' Submission Agreement signed by Daniel H. Greenberg, Esq., on March 22, 1993 pursuant to Limited Powers of Attorney by each Claimant.

Joint Statement of Answer filed on: June 2, 1993.

Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc.'s Submission Agreement signed on April 27, 1993.

Respondent Jeffrey C. Thompson's Submission Agreement signed on April 22, 1993.

HEARING INFORMATION

Pre-hearing Conferences: November 24, 1993
 June 13, 1994
 July 6, 1994 (full panel)
 September 28, 1994

Hearing Dates/Sessions: January 10, 1995 / Two Sessions
 January 11, 1995 / Two Sessions
 January 12, 1995 / Two Sessions
 January 17, 1995 / Two Sessions
 January 18, 1995 / Two Sessions
 January 19, 1995 / Two Sessions
 February 8, 1995 / Two Sessions
 February 9, 1995 / Two Sessions
 February 10, 1995 / Two Sessions

Hearing Location: NASD offices located in New York City, NY.

CASE INFORMATION

Claimants U.K. and General Securities, PLC ("UKGS"), Phillip F.X. Fernandes ("Fernandes"), Brain S. Hershon ("Hershon"), Melvyn P. Lesser ("Lesser"), William F. Watson ("Watson") and Saeed Younis ("Younis") alleged that Respondents Merrill Lynch, Pierce, Fenner and Smith, Inc. ("MLPFS") and Jeffrey C. Thompson ("Thompson") made misrepresentations which Claimants relied upon and which caused Claimant UKGS and the individual Claimants to incur substantial losses and caused Claimant UKGS to go out of business.

Claimants contended that The Securities Association, Limited ("TSA"), by letter dated December 20, 1989, informed UKGS that it did not meet the "Base Requirement" (minimum capital requirements), and that it was required to submit details as to how it proposed "to satisfy TSA Capital Requirements after the implementation of the new Base Requirement Calculation." Claimants further contended that the directors of UKGS decided to seek outside capital and that on or about March 31, 1990, Anthony J. Sancho ("Sancho"), President of Lint Group ("Lint"), met in England with Claimants Fernandes, Lesser and Younis. Claimants further alleged that Sancho represented that the Lint Group was capable of providing or arranging all the necessary capital financing requirements of UKGS. Claimants alleged that in April, 1990, in further

conversations with Claimant Fernandes, Sancho represented the excellent credentials of his firm and of himself during a transatlantic telephone conversation initiated by Sancho. The transatlantic call was with Claimant Fernandes, Sancho and Respondent Thompson joined the call from his office in Fort Lauderdale. During that call Respondent Thompson stated to Claimant Fernandes, that the Lint Group was financially capable themselves of making the \$3,000,000.00 loan out of their own assets, that they were able also to obtain the necessary financing through other lending sources, that they had completed a number of substantial "deals" through Respondent MLPFS, who acted as their financial consultants, that they maintained depository and securities accounts for The Lint Group, and that Respondent Thompson personally handled all of these transactions and accounts. Claimants contended that acting principally in reliance on the aforesaid statements and representations of Respondent Thompson, Claimants agreed to engage and utilize the services of Lint Group as the lender of its capital needs and requirements and agreed to and did pay Lint Group an advance loan commitment fee of \$20,000.00 which was deposited by UKGS with Respondent MLPFS into an account maintained by it in the name of Lint Group. Claimants further contended that Respondent Thompson stated that Respondent MLPFS required, as a condition of its participation in the proposed lending transaction, that it act on behalf of UKGS as its depository, fiduciary, financial advisor and consultant and that UKGS would be required to open an account with Respondent MLPFS to be known as a "Working Capital Management Account" ("WMCA"), into which the proceeds of the Lint Group loan would be deposited, and thereafter disbursed to UKGS by MLPFS. Claimants contended that on or about April 25, 1990, UKGS executed and returned the WCMA agreement to Respondent MLPFS, and on the following dates, at the direction of Respondent Thompson, UKGS caused the wire transfer of the following amounts, to be credited as follows:

- (a) on April 26, 1990, for further credit to the account of Lint Group with MLPFS, the amount of \$20,000.00
- (b) on May 1, 1990, for further credit to the account of UKGS, in an account to be opened by MLPFS in the name of UKGS, in the amount of \$20,000.00

Claimants further contended that additional negotiations were had between Lint Group and UKGS leading to a trip by Claimants Fernandes and Lesser on or about May 18, 1990, to New Jersey for several days of meetings. During this time several telephone conversations were held between Claimant Lesser in New Jersey and Respondent Thompson in Fort Lauderdale discussing the terms of the proposed transaction and the need for UKGS to have a prompt resolution. Claimants alleged that Respondent Thompson assured Claimant Lesser that in his opinion the loan would be made as structured and that he could not envision any delay on the part of Lint Group to complete the transaction.

Claimants further alleged that on or about May 25, 1990, Lint Group issued to UKGS a "conditional loan commitment" and the proposed structure for the loan. Claimants contended that upon receipt of the aforesaid conditional loan commitment, UKGS wrote to Lint Group stating that TSA had extended the deadline for the receipt of funds by UKGS, to June 18, 1990.

Claimants further contended that on May 30, 1990, UKGS acting under the advice, consent and permission of Lint Group, disclosed to TSA that MLPFS was involved in the Lint Group transaction and furnished to TSA the name, address and telephone numbers of Respondent Thompson. Claimants contended that on June 12, 1990, Lint Group telefaxed a signed written agreement to UKGS, in which it agreed to lend UKGS \$5,250,000.00. Claimants contended that upon receipt of the loan agreement UKGS signed the loan agreement and ceased its efforts to procure financing from alternate sources. Claimants further contended that on June 13, 1990, TSA wrote to UKGS an amended direction stating that UKGS was required to introduce sufficient capital to satisfy its minimum capital requirements by June 20, 1990. On June 14, 1990, TSA wrote to UKGS discussing a proposed long term subordinated loan of 250,000.00 pounds sterling from the five directors to UKGS stating that if such is not received by UKGS "by the close of business on June 20, 1990, the firm will be issued with Suspension Order Immediately". Claimants alleged that on June 19, 1990, UKGS wrote to Lint Group and informed them of the notice from TSA and explained that as a board, they were not prepared to invest in the company until they were informed by Respondent MLPFS that their working capital is irrevocably allocated to their account. Claimants further alleged that Respondent MLPFS was informed that it was essential for the above confirmation to reach Claimants by 5 p.m. on June 20, 1990, so the agreement could be forwarded to TSA for signature by the deadline of 9 a.m. the next morning. On June 20, 1990, TSA issued a Suspension Order to UKGS, suspending it from continuing to act as a member firm, effective immediately, by reason of its failure to introduce sufficient capital to satisfy minimum capital requirements. Claimants further contended that on June 21, 1990 UKGS wrote to TSA formally requesting a stay of the suspension order. Claimants alleged that during the period between June 12, 1990 and July 5, 1990, UKGS had many telephone conversations with Respondent Thompson, during which Respondent Thompson was kept fully informed as to the events occurring with respect to the completion of the execution of the lending agreement. Claimants further alleged that on June 29, 1990, Respondent Thompson recommended to Claimant Fernandes that the directors of UKGS should make the long term subordinated loan of 250,000.00 pounds sterling to UKGS if necessary, and that if it were his money he would do so. Claimants contended that acting in reliance upon the aforesaid statements and representations of Respondent Thompson, the directors of UKGS borrowed and obtained the necessary 250,000 pounds sterling to complete the long term subordinated loan agreement. The Claimants alleged they relied upon such statements made by Respondent Thompson and the directors would not have made such loan otherwise but rather and instead would have allowed UKGS to go out of business at the time. Claimants further contended that on July 6, 1990 TSA revoked the Suspension Order. On July 10, 1990 Lint Group informed UKGS of a temporary delay on the previously scheduled closing with a new closing date of July 20, 1990. On or about June 29, 1990, UKGS received from Respondents Merrill Lynch, Pierce, Fenner and Smith, Inc. and Thompson a facsimile attaching a letter dated June 27, 1990 from Antec National Corporation describing the proposed loan agreement. Claimants alleged that on July 20, 1990 UKGS wrote to Lint Group referring to the failure of Lint Group to complete the contract signed on June 12, 1990 and stating that if the contract was not completed on or before July 27, 1990 they would have no alternative but to

institute proceedings against Lint Group and Respondent MLPFS. Claimants further alleged that the loan fund required by the loan agreement of June 12, 1990 from Lint Group to UKGS was never delivered to UKGS and on January 28, 1991, UKGS wrote to TSA, stating that the directors feel it would be prudent to cease to trade, requesting that the "company's cessation should be the close of business on January 20, 1991."

Respondents Merrill Lynch, Pierce, Fenner and Smith, Inc. and Jeffrey C. Thompson maintained that the principal parties to the transaction which forms the basis for this claim are not parties to this arbitration. Respondents further maintained that those parties include Lint Group, Inc., its President Anthony J. Sancho and Aril Kuhli, the individual retained by UKGS to obtain financing and who introduced Claimants to the Lint Group for that purpose. Respondents further maintained that Respondent MLPFS' only connection to Claimants was to have been selected by the Lint Group as a depository through which to channel the illusive loan proceeds. Respondents contended that they did not make any representation to Claimants that the Lint Group was financially capable of funding a \$3,000,000.00 loan itself. Respondents further contended that MLPFS' sole relationship with Lint Group was to provide money market funds and checking services. Respondents maintained that the only representation ever made by Respondent Thompson regarding the funding of the loan was that if and when the Lint Group actually deposited the loan proceeds into the UKGS account, Respondent Thompson would contact UKGS to confirm the deposit. Respondents further maintained that in the summer of 1990 Respondent Thompson received two telephone calls from Claimants thanking him for his honesty and advice and informing him that they were planning on suing Sancho and the Lint Group over the failed loan transaction and with no hard feelings intended, and they would also name him and MLPFS in the suit because "that is where the money is". Respondents further contended that they should not be liable for Claimants' losses.

RELIEF REQUESTED

Claimant U.K. and General Securities PLC requested compensatory damages in the sum of 5,312,270 pounds sterling

Claimant Philip F.X. Fernandes requested compensatory damages in the sum of 1,655,573 pounds sterling

Claimant Brian S. Hershon requested compensatory damages in the sum of 1,655,573 pounds sterling

Claimant Melvyn P. Lesser requested compensatory damages in the sum of 1,655,573 pounds sterling

Claimant William F. Watson requested compensatory damages in the sum of 1,617,981 pounds sterling

Claimant Saeed Younis requested compensatory damages in the sum of 1,649,573 pounds sterling

Claimants requested punitive damages in a just and reasonable amount to be determined by the

arbitrators plus reasonable attorneys' fees and the costs and disbursements of this proceeding.

Respondents requested that all claims asserted by Claimants be denied, with costs and attorneys' fees being assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrators made a determination that the hearing would be bifurcated: part one would address the liability issue and part two would address damages. All claims on the liability portion are dismissed in their entirety. Accordingly there is no need for a hearing to determine damages.

AWARD

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

1. The claims of the Claimants U.K. and General Securities PLC, Phillip F.X. Fernandes, Brian S. Hershon, Melvyn P. Lesser, William F. Watson, and Saeed Younis against Respondents Merrill Lynch, Pierce, Fenner and Smith, Inc. and Jeffrey C. Thompson are dismissed in their entirety.
2. The Claimants' requests for punitive damages are denied.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

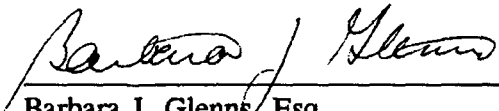
The forum fees total \$29,400.00 and this sum has previously been deposited by the parties in the form of additional hearing session deposits. The arbitrators assessed the forum fees as follows:

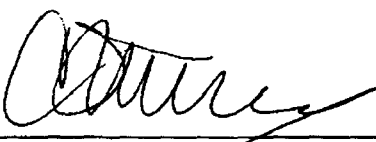
- (1) \$14,700.00 is assessed jointly and severally against the Claimants.
- (2) \$7,350.00 is assessed against Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc.
- (3) \$7,350.00 is assessed against Respondent Jeffrey C. Thompson.

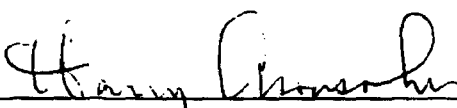
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ARBITRATOR'S SIGNATURE


Barbara J. Glenns, Esq.
Industry Arbitrator


Aegis J. Frumento, Esq.
Industry Arbitrator


Harry Aronson
Industry Arbitrator

Date of Decision: April 11, 1995

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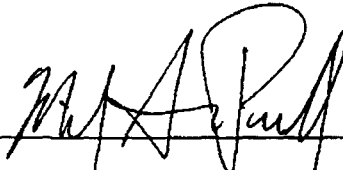
Award #93-01389

~~DISTRICT~~
STATE OF: COLUMBIA

~~CITY~~
COUNTY OF: WASHINGTON

SS:

On this 29th day of MARCH, 1995, before me personally appeared Barbara J. Glenns, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

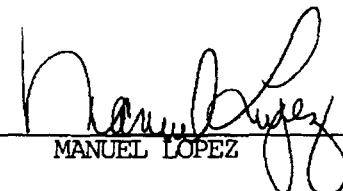
X 
My Commission Expires: 10/31/98

STATE OF: NEW YORK

SS:

COUNTY OF: NEW YORK

On this 5th day of APRIL, 1995, before me personally appeared Aegis J. Frumento, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

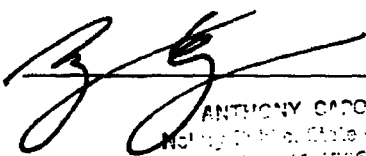

MANUEL LOPEZ
MANUEL LOPEZ
Notary Public, State of New York
No. 31-2401880
Qualified in New York County/
Commission Expires 11-30-95

STATE OF: NEW YORK

SS:

COUNTY OF: NEW YORK

On this 3rd day of APRIL, 1995, before me personally appeared Harry Aronsohn known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.


ANTHONY CAPORUSSO
Notary Public, State of New York
No. 31-4806703
Qualified in Nassau County
Commission Expires October 31, 1996