

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Paul A. Sherman Trustee/Sherco Ret. Plan

96-01323

Name of Respondents

Merrill, Lynch, Pierce, Fenner & Smith, Inc.  
Lawrence J. Haertel  
Kenneth C. Mulreed

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 25, 1996, Claimant Paul A. Sherman as Trustee for the Sherco Retirement Plan ("Claimant"), who appeared Pro Se, alleged that Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), Lawrence J. Haertel ("Haertel") and Kenneth C. Mulreed ("Mulreed") ("collectively referred to as Respondents"), failed to execute a purchase order for 1,000 shares of Starwood, an IPO, for his company's Retirement Account. Claimant further alleged that he informed Haertel to purchase 1,500 shares of Starwood in July of 1995, and that only 500 were purchased for his Cash Management Account ("CMA"). Claimant also alleged that on a number of occasions following the intended purchase date, he indicated to the Respondents a belief that he owned 1,500 shares with 1,000 held in his Retirement CMA ("RCMA"). Claimant contended that although the Respondents knew that he did not own 1,500 shares, they failed to inform him of this fact. Claimant further contended that due to his busy schedule, he did not discover the failed execution in his own records for seven months. Claimant also contended that since MLPFS is a full service brokerage firm, he relied on Respondents to ensure that his account was properly maintained. Claimant asserted that his attempts to resolve this problem with the Respondents were unsuccessful and that as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondents MLPFS, Haertel and Mulreed through their representative and in-house counsel at MLPFS, Howard C. Sawransky, Esq., denied all charges of wrongdoing and liability alleged in the Statement of Claim. Respondents maintained that the stock in dispute, Starwood Lodging Trust ("Starwood"), was in IPO and, as such, was subject to certain regulatory restrictions

during the selling process. Respondents further maintained that while an indication of interest in the IPO is acceptable, purchase orders may not be taken. Respondents also maintained that Claimant had expressed an interest for 1,500 shares and that due to heavy demand, Haertel was allocated a limited number of shares of which he distributed equitably to his clients with Claimant receiving 500 shares in his CMA. Respondents contended that following the Starwood transaction, Claimant made two purchases in his RCMA which he could not have funded had he purchased the additional 1,000 shares in dispute. In addition, Respondents contended that Claimant never place a firm order in the secondary market and, as a result, any purchase would have been tantamount to an unauthorized and therefore illegal trade. Respondents also contended that as a result of the above, they should not be held liable.

### **RELIEF REQUESTED**

Claimant Paul A. Sherman as Trustee for Sherco Retirement Plan requested \$10,000.00 in actual damages.

Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc., Lawrence J. Haertel and Kenneth C. Mulreed requested that the claims of the Claimant be dismissed.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The arbitrator considered and reviewed Respondent Kenneth Mulreed's motion to dismiss him because he is not a party in interest as no allegations have been made against him. The motion is denied.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Harold G. Levison, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Paul A. Sherman as Trustee for Sherco Retirement Plan on March 21, 1996 and Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. on June 6, 1996 and not by Respondents Lawrence Haertel and Kenneth Mulreed as is required by Sections 12 and 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 Claimant Paul A. Sherman as Trustee for Sherco Retirement Plan against Merrill, Lynch, Pierce, Fenner & Smith, Inc., Lawrence J. Haertel and Kenneth C. Mulreed 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, **HAROLD G. LEVISON**, do hereby swear or affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

  
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Signature of Arbitrator

DATE OF DECISION: August 30, 1996