

MSRB
MUNICIPAL SECURITIES RULEMAKING BOARD

In the Matter of the Arbitration between	:	
	:	
MATTHEW JOHNSON,	:	
	:	
Claimant,	:	AWARD
	:	
v.	:	
	:	MS90-40
SHEARSON LEHMAN BROTHERS INC. A/K/A	:	SC0-025
SHEARSON LEHMAN HUTTON INC.,	:	
Respondent.	:	

The Undersigned, pursuant to section 31 of MSRB rule G-35, hereby states as follows:

CASE SUMMARY/RELIEF REQUESTED

Claimant instituted the captioned controversy on or about July 6, 1990 alleging, among other things, that Respondent failed to deliver to Claimant pursuant to Claimant's instructions five of ten zero coupon municipal bonds purchased by Respondent for Claimant during the period from April 18, 1985 through December 20, 1985. Claimant alleged that despite extensive communications with Respondent that Claimant had not received all of the certificates, Claimant never received the certificates or replacement certificates. Claimant also alleged that Respondent would not agree to bear the costs of obtaining replacement certificates. Claimant sought to recover interest on one of the bonds that had been redeemed from the date of redemption, the costs of replacing the other allegedly non-delivered certificates, punitive damages equal to the total of the foregoing, attorneys' fees, other incidental expenses, and the costs of this proceeding. The total amount requested by the Claimant was between \$5,000 and \$10,000.

Respondent denied the material allegations contained in the statement of claim and denied any liability to Claimant. Respondent argued, among other things, that Claimant failed to notify Respondent in a timely manner of the allegedly missing certificates and that, as a result, Claimant should be liable for any replacement costs. Respondent requested dismissal of the statement of claim in its entirety, and an award for Respondent's costs including attorneys' fees.

A hearing was held on Claimant's claim on February 28, 1991, in Washington, D.C., at which time the parties agreed to a settlement. The record remained open pending receipt of written

confirmation from the Claimant that all of his claims had been withdrawn or settled.

In a letter dated May 7, 1991, and in subsequent correspondence, Respondent alleged that Claimant fraudulently induced Respondent to enter into a settlement agreement and release. Respondent alleged, among other things, that immediately after signing the settlement papers on April 5, 1991, Claimant deposited into his account at Respondent the bond certificates which he claimed he had never received. Respondent further alleged that Claimant not only had received the certificates, they were in his possession at all times during the pendency of this proceeding. Respondent requested that the settlement agreement and release be rescinded and that Respondent be awarded its attorneys' fees incurred in defending Claimant's claims and in arbitrating the rescission of the settlement agreement.

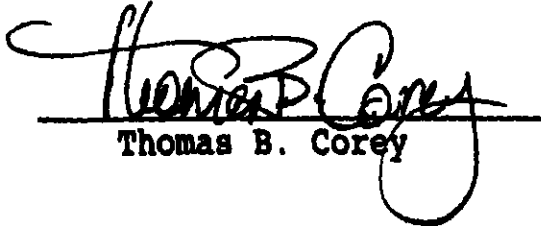
Claimant denied Respondent's allegation of fraud. Claimant argued, among other things, that he did not discover that the allegedly missing certificates were in his possession until after the hearing and shortly after the settlement agreement had been executed. Claimant argued that the allegedly missing certificates were among other bonds that he deposited with Respondent after the settlement agreement had been executed and that if he had intended to defraud Respondent, he would not have deposited the bonds at issue with Respondent. Claimant maintains that he believed that he had never received the bonds at issue and that he brought this action in good faith.

AWARD

The undersigned arbitrator reviewed the controversy between the parties set forth in submissions to the arbitrator signed by Claimant on May 25, 1990 (filed with the MSRB on July 6, 1990) and by Respondent on October 3, 1990. The undersigned, having considered Respondent's allegation of fraud and its request for rescission of the settlement agreement and release solely upon the pleadings and evidence submitted by the parties, the parties having consented to this procedure, pursuant to section 34 of MSRB rule G-35, has determined, in full and final resolution of the issues submitted for determination, as follows:

1. The settlement agreement and release shall be rescinded and Claimant shall return to Respondent the sum of \$5,800.
2. Each of the parties shall bear its own costs incurred in connection with this proceeding, including attorneys' fees.

3. Claimant's \$200 arbitration deposit shall be retained by the MSRB as forum fees, pursuant to MSRB rule A-16.

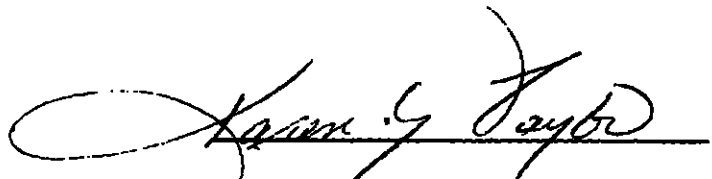

Thomas B. Corey

Dated: 12/9/92

STATE OF MARYLAND
COUNTY OF BALTIMORE

SS.:

On this 9th day of DECEMBER, 1992, before me personally appeared Thomas B. Corey to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


My Commission Expires
April 5, 1995

3. Claimant's \$200 arbitration deposit shall be retained by the MSRB as forum fees, pursuant to MSRB rule A-16.

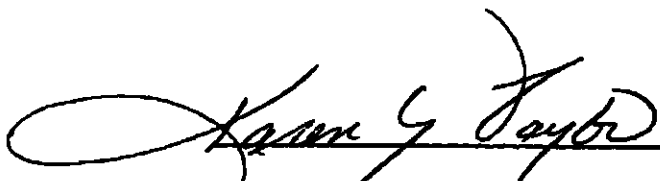
Public Arbitrator

Dated: 12/9/92

STATE OF MARYLAND
COUNTY OF BALTIMORE

SS.:

On this 9th day of DECEMBER, 1992, before me personally appeared _____ to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


My Commission Expires:
April 5, 1995