

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 03-02402

Paula Colman, TTEE, Claimant v. Quick & Reilly, Inc. and Roger W. Nolan, Respondents.

ATTORNEYS:

For Claimant, Paula Colman, TTEE, ("Claimant"), appeared Bradley Colman, Granville, OH.

For Respondents, Quick & Reilly, Inc. and Roger W. Nolan, ("Respondents"), appeared Peter Byer, Esq., New York, NY.

NATURE OF DISPUTE: Customer v. Member and Associated Person

DATE FILED: April 2, 2003

CASE SUMMARY: Claimant alleged that Respondents breached their fiduciary duty, and negligently misrepresented the quality of TXU preferred stock. Claimant maintained that due to Respondents' action, her account suffered financial losses.

ARBITRATOR'S REPORT: Please find attached.

Claim Data

Claim: \$23,502.58
Filing Fees: \$425.00
Other: Unspecified

Award Data

Award: \$17,450.00
Filing Fees: \$425.00
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondents are jointly and severally liable and shall pay to the Claimant \$17,450.00. 2) All other relief requests are denied. 3) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously. 4) Respondents are jointly and severally liable and shall pay to the Claimant \$425.00 as reimbursement of the filing fee.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent Quick & Reilly, Inc. has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

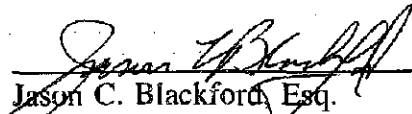
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Award 03-02402

Jason C. Blackford, Esq.

Sole Public Arbitrator

AFFIRMATION

I, Jason C. Blackford, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Jason C. Blackford, Esq.

Dec. 9, 2003
Signature Date

December 19, 2003
Date of Service (For NASD-DR office use only)

ATTACHMENT TO #9:

In re: The matter of Paula Colman, TTEE v. Roger Nolan, Quick & Reilly, Inc.
NASD Dispute Resolution
Case No. 03-02402

The purchaser of the security in question was Paula Colman Revocable Trust, Paula Colman, Trustee. This security was TXU Europe Capital I guaranteed to the extent described in the prospectus by TXU Europe Limited. The sole asset of TXU Europe Capital I would be Preferred Partnership Securities of TXU Europe Funding I, L.P. The sole asset of TXU Europe Funding I, L.P. was to be debentures issued by TXU Eastern Funding Company and one or more other eligible subsidiaries of TXU Limited. In other words, the issuer owns equity securities of TXU Europe Funding I, L.P. The sole assets of TXU Europe Funding I, L.P. are debentures issued by TXU Eastern Funding Company and one or more other subsidiaries. None of these preferred partnership security interests has any stated maturity.

TXU Europe Limited guarantees the TOPrs and the preferred partnership security interests. TXU Europe Limited is an indirect wholly-owned subsidiary of Texas Utilities Company. TXU Europe Limited is a holding company for TXU Corp.'s UK and other European operations. The debentures that are held by TXU Europe Funding I are unsecured and subordinated obligations and will be junior in right of payment to the senior debt of those subsidiaries. TXU Europe Limited's guarantees are subordinate and junior in right of payment to all other unsubordinated liabilities of TXU Europe Limited and are effectively subordinated to the existing and future liabilities in preference share capital of TXU Europe Limited's subsidiaries.

As a person who has written many prospectuses over the years, I found this prospectus to be one of the most difficult to read and understand. The prospectus spelled out the risks of purchasing these high yield securities. The ephemeral nature of the guarantees and the rights of the owners of these preferred partnership interests are also disclosed in the prospectus.

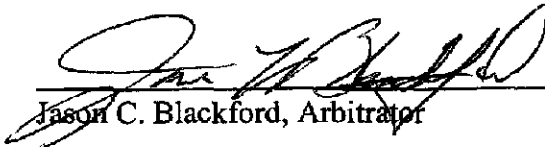
The prospectus for TXU Europe Capital I outlines the facts though in a muddled and convoluted manner. It is obvious that Dr. Colman was confused about the securities when he learned there was a problem with TXU, the parent company, in October of 2002. He states in his complaint that: "Mr. Nolan again stated that my investment's dividend would come before the common." Again, a reading of the prospectus would have shown that there was no relationship between the TXU common stock and the security that was purchased. On October 14, 2002 it was well known that

TXU Corporation had cut its dividend by 80% and had distanced itself from its cash strapped European unit. At approximately the same time, Standard & Poor's downgraded not only TXU Corp. but TXU Europe, making the statement that TXU Europe's liquidity position was extremely tenuous and downgraded all of the bonds to junk bond status.

I find that Mr. Nolan had the obligation, when asked by Dr. Colman about the situation, to investigate and respond truthfully. The information that would have been available by a check on any of the major news services would have provided substantial information to Mr. Nolan concerning the situation. The problem with TXU was the fact that the S&P had cut its bond debt to junk bond status and the fact that TXU Corp. had decided not to attempt a major bailout of its European operations.

The relationship between a broker and his customer is fiduciary in nature. Once the customer has asked about the situation, there was a duty to advise the customer of the problems that were readily available on the news wire services. This Mr. Nolan failed to do. In Dr. Colman's complaint, he indicated that at this time the price was \$20 a share.

I find that there are no misleading statements made by Dr. Colman with respect to the initial purchase of the shares of TXU Europe Capital I. The failure of Mr. Nolan to provide the up-to-date information that would be necessary for Dr. Colman to evaluate the securities constitutes a breach of fiduciary duty and/or negligence. As a consequence, I find for the complainant in the amount of Seventeen Thousand Four Hundred Fifty Dollars (\$17,450.00) together with the costs of this arbitration.



Jason C. Blackford, Arbitrator

Date: November 19, 2003