

In the Matter of Arbitration Between
JOHN J. and MARGARET BUTLER
Claimants
v.
THOMSON MCKINNON SECURITIES, INC.
Respondents

CASE SUMMARY

Thomson McKinnon maintained that the confirmation, monthly statement and quotation by the sales representative were erroneous. This bond trust offering was a prospectus offering. The terms, conditions and yields as disclosed in the prospectus were, therefore, the binding and accurate elements of the transaction. Since the stated yield of 9.48% was an error, there was no contract formed for lack of a "meeting of the minds" between the parties. As such, the damages sought by Claimants are excessive.

Claimants requested the difference between the price they paid to Thomson McKinnon for the stated yield of 9.48% and 7.48% as set forth the prospectus. This amount is \$19,591.83, plus interest at the rate of 2% per annum on \$92,705.75 from May 12, 1986 to date of payment. Claimants also requested assessment of the arbitration costs against Thomson McKinnon.

7/18/89

If any liability to Claimants was found by the arbitration panel, Thomson McKinnon requested that the appropriate remedy was the rescission of the alleged contract as being void ab initio and/or unconscionable, thereby allowing Thomson McKinnon to repurchase the 95 NMT Series 17 units for Claimants purchase price with Claimants to retain all interest earned to date and assessment of the arbitration fees equally against the parties.

AWARD

On Monday, June 8, 1989 in Chicago, Illinois, in a hearing lasting one session, the undersigned arbitrators heard the controversy between the parties as set forth in submission to arbitration signed on July 23, 1988 by Claimants John J. and Margaret M. Butler and on January 10, 1989 by Donald G. McCabe, Executive President and General Counsel on behalf of Respondent Thomson McKinnon Securities, Inc.

Prior to taking evidence on the merits of the claim, the panel allowed Claimants to amend their claim for damages, pursuant to Section 39(b) of the NASD Code of Arbitration Procedure. The amendment requested interest at the rate of 7% per annum on the Claimants' alleged damages of \$19,591.83.

The arbitration panel, having considered the pleadings, the testimony and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants are entitled to rescind their purchase of 95 units of National Municipal Trust Insurance Series 17 (NMT-17). Accordingly, upon tender of the 95 units of (NMT-17) to Thomson McKinnon by the Claimants, Thomson McKinnon shall pay to the Claimants, jointly, the sum of Ninety-two Thousand Eight Hundred Ninety-eight Dollars and Sixty Cents (\$92,898.60);
2. Thomson McKinnon is also liable for and shall pay to Claimants, interest on the principal amount Claimants invested with Thomson McKinnon at the rate of 2% per annum from and inclusive of May 12, 1986 to and inclusive of May 12, 1987;
3. The Claimant's claim for damages in the amount of \$19,591.83 shall be and is hereby dismissed in its entirety;
4. The Claimant's claim for interest at a annual rate of 7% payable on the sum invested with Thomson McKinnon shall be and is hereby dismissed in its entirety;
5. The parties shall each bear their respective costs and expenses including any attorney's fees incurred in this matter; and

6. Pursuant to Section 43(b) of the NASD Code of Arbitration Procedure, the NASD shall retain, as forum fees, the \$400.00 filing fee previously deposited with the NASD by Claimants.

CONCURRING

S/William M. Getzoff, Esq.
Presiding Chair

S/Mr. Richard B. Johnson

DISSENTING

S/Sms. Susan K. Franz