

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

JUL 21 1992

In the Matter of the Arbitration Between

Name of Claimant

El Paso County School District #11

and

90-01929

Name of Respondents

Bear Stearns & Co., Inc., Mortgage
Government Securities, Inc., M.G.S.I.
Incorporated, M.G.S.I. Securities, Inc.,
Frank J. Marx, Stephen F. Caldwell,
Robert H. Quarles

REPRESENTATION OF PARTIES

Claimant was represented by James Jablonski, Esq. of Gorsuch, Kirgis, Campbell, Walker & Grover, Denver, Colorado.

Respondent Bear Stearns & Co., Inc. was represented by David G. Palmer, Esq. of Gibson, Dunn & Crutcher, Denver, Colorado.

Respondents Mortgage Government Securities, Inc., M.G.S.I. Incorporated, M.G.S.I. Securities, Inc., Frank J. Marx, and Stephen F. Caldwell were represented by Lawrence J. Maun, Esq. of Fuqua, Keim & Maun, Houston, Texas.

Respondent Robert H. Quarles was represented by James Max Moudy, Esq., Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about July 11, 1990. Claimant's Submission Agreement signed on July 9, 1990 by Michael P. Hogan.

Statement of Answer filed by Respondent, Bear Stearns & Co., Inc. on or about October 5, 1990.

Statement of Answer filed by Respondents Mortgage Government Securities, Inc., M.G.S.I. Incorporated, M.G.S.I. Securities, Inc., Frank J. Marx, and Stephen F. Caldwell on or about October 9, 1990. Respondents Mortgage Government Securities, Inc., M.G.S.I. Incorporated, and M.G.S.I. Securities, Inc. undated Submission Agreements signed by Stan Golub. Respondent Frank J. Marx's Submission Agreement was undated. Respondent Stephen F. Caldwell's Submission Agreement was undated.

Statement of Answer of Respondent Robert E. Quarles filed on or about October 11, 1990. Respondent Robert E. Quarles' Submission Agreement was undated.

HEARING INFORMATION

The hearing was held on Thursday, February 20, 1992 for two (2) sessions, Friday, February 21, 1992 for two (2) sessions, Monday, February 24, 1992 for two (2) sessions, Tuesday, February 25, 1992 for two (2) sessions, Wednesday, February 26, 1992 for two (2) sessions, Monday, March 23, 1992 for two (2) sessions, Tuesday, March 24, 1992 for two (2) sessions, Wednesday, March 25, 1992 for two (2) sessions, Wednesday, May 27, 1992 for two (2) sessions, Thursday, May 28, 1992 for three (3) sessions and Friday, May 29, 1992 for (3) three sessions in Denver, Colorado for a total of twenty-four (24) sessions.

CASE SUMMARY

Claimant alleged that Respondent Robert E. Quarles ("Quarles") made unsuitable recommendations to invest in Federal National Mortgage Association Stripped Mortgage Backed Securities, Class K-2 ("FNMA K-2"). Claimant alleged that these securities were unsuitable in light of its statutory mandates, investment objectives and policies, and cash flow requirements, which were disclosed to Respondent Quarles. Claimant also alleged that Respondents M.S.G.I. Securities, Inc. and Quarles acted as agents for Respondent Bear Stearns & Co., Inc.

Claimant further alleged that the actions of Respondents Quarles, M.S.G.I. Securities, Inc., Bear Stearns & Co., Inc. constituted violations of Sections 10(b), 20(a) and 20(b) of the Securities Exchange Act of 1934; Sections 12(2), 15, and 17(a) of the Securities Act of 1933; the Colorado Securities Act of 1981; breach of fiduciary duty; common law fraud; Sections 1, 2, and 27 of Article III of the NASD Rules of Fair Practice; Rules 342, 401 and 405 of the New York Stock Exchange; negligence; negligent misrepresentation; and breach of contract.

Respondent Bear Stearns & Co., Inc. denied the allegations of wrongful improper or actionable conduct by it. Bear Stearns & Co., Inc. further stated that it simply acted as a clearing broker for the transactions in dispute in this matter. Bear Stearns & Co., Inc. further stated that as the clearing broker it did not have a customer/broker relationship with the Claimant, that it performed its clearing functions properly.

Respondents Mortgage Government Securities, Inc., M.G.S.I. Incorporated, M.G.S.I. Securities, Inc., Frank J. Marx, and Stephen F. Caldwell denied the allegations of wrongdoing asserted by Claimant.

Respondent Robert Quarles denied the allegations set forth in the Statement of Claim. Respondent Quarles stated that authorized representatives of the school district made the decisions to invest and what type of security to purchase.

RELIEF REQUESTED

Claimant requested an award of unspecified compensatory damages, unspecified exemplary damages, interest, reasonable attorney's fees, and costs. Claimant amended it's request at the hearing to a request of an award of \$2,500,000.00 including interest.

Respondent Bear Stearns & Co., Inc. requested that the claims against it be dismissed.

Respondents Mortgage Government Securities, Inc., M.G.S.I. Incorporated, M.G.S.I. Securities, Inc., Frank J. Marx, and Stephen F. Caldwell requested that the Claimant take nothing and that they be awarded attorney's fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Stanford E. Golub was dismissed from this proceeding as result of the bankruptcy stay in effect.

Respondent Bear Stearns & Co., Inc. did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and presented testimony at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD.

AWARD

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

1. All claims and counterclaims asserted herein shall be and hereby are dismissed in their entirety.
2. The undersigned aribtrators find that Claimant El Paso County School District #11 is entitled to payment of \$82,345.00 as payment of the May 25,

1985 distribution on FNMA Trust #2. The payment of this sum is still in doubt. The record will remain open to permit Claimant and Respondent Bear Stearns to make further inquiry as may be necessary to determine whether such payment was previously forwarded to claimant. In the event such payment was not forwarded to Claimant, Respondent Bear Stearns & Co., Inc. shall pay to the Claimant the sum of \$82,345.00 (Eighty two thousand three hundred forty five dollars) plus interest at the rate of 8% per annum from and inclusive of the date such payment was due to and inclusive of the date payment is made in full.

3. Each party shall bear its own costs, expenses, and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain the hearing session deposit in the amount of \$600.00 previously deposited with the NASD by the Claimant. Claimant shall pay to the NASD the sum of \$11,400.00 (Eleven thousand four hundred dollars) and Respondents Bear Stearns & Co., Inc., Mortgage Government Securities, Inc., M.G.S.I. Incorporated, M.G.S.I. Securities, Inc., Robert H. Quarles shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$12,000.00 (Twelve thousand dollars) as forum fees.

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each prehearing conference, if any.

The NASD shall retain postponement fees previously deposited with the NASD by the parties, if any.

Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

July 7, 1992

Thaddeus J. Tezza, Ph.D.
Thaddeus J. Tezza, Ph.D.
Presiding Chair
Public Arbitrator

7-21-92

Charles G. Michaels, Esq.
Public Arbitrator

Gerald W. Wischmeyer
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Industry Arbitrator

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7/17/92


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