

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

First National Bank of Farmington, New Mexico,  
a Nationally Chartered Bank

91-01972

Name of Respondents

Mortgage Government Securities, Inc.,  
a Texas corporation; M.G.S.I. Securities,  
Inc., a Texas corporation; Stan E. Golub

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REPRESENTATION

For Claimant: First National Bank of Farmington, New Mexico was represented by G. Thomas Fleming, III, Esq. of Jones, Bell, Simpson & Abbott located in Los Angeles, California and Eliza Stewart, Esq. of Madison, Harbour, Mroz and Puglisi, located in Albuquerque, New Mexico.

For Respondents: Mortgage Government Securities, Inc., M.G.S.I. Securities, Inc. and Stan E. Golub were represented by Larkin C. Eakin, Jr., Esq., William O. McDonald, Esq. and Kimberly Willis, Esq. of Woodard, Hall & Primm, located in Houston, Texas, and James Max Moudy, Esq. of Houston, Texas.

CASE INFORMATION

Statement of Claim was filed: June 25, 1991.

Claimant's Submission Agreement signed by Richard I. Ledbetter, President, on: June 20, 1991

Joint Statement of Answer filed by Respondents Mortgage Government Securities, Inc., M.G.S.I. Securities, Inc. and Stan E. Golub on: October 28, 1991.

Respondent Mortgage Government Securities, Inc.'s Submission Agreement signed by Stan E. Golub, President, Mortgage Government Securities on: October 25, 1991.

Respondent M.G.S.I. Securities, Inc.'s Submission Agreement signed by Stan E. Golub, President, M.G.S.I. Securities, Inc. on: October 25, 1991.

Respondent Stan E. Golub's Submission Agreement signed on: October 25, 1991.

Motion for Partial Summary Judgment or Award filed by Respondents Mortgage Government Securities, Inc., M.G.S.I. Securities, Inc. and Stan E. Golub on: March 26, 1992.

Opposition to Respondents' Motion for Partial Summary Judgment filed by Claimant First National Bank of Farmington, New Mexico on: April 20, 1992.

Motion to Dismiss filed by Respondents Mortgage Government Securities, Inc., M.G.S.I. Securities, Inc. and Stan E. Golub on or about May 11, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: May 11, 1992 for two (2) sessions.  
May 12, 1992 for two (2) sessions.  
May 13, 1992 for two (2) sessions.  
May 14, 1992 for two (2) sessions.  
May 15, 1992 for two (2) sessions.

Hearing Location: Albuquerque, New Mexico

CASE SUMMARY

Claimant First National Bank of Farmington, New Mexico ("FNB") alleged that FNB invested the total principal sum of \$9.5 million in an "Automobile Receivables Pool Program" (the "Program"), which was syndicated by a California company known as Reseda Finance Corporation ("Reseda"). The Program consisted of packaged "pools" of automobile leases and installment sales contracts, which were to be managed and serviced exclusively by Reseda. Investors such as FNB expected to receive profits from their original investment in the Program, "net" of the sales commissions charged by Respondent M.G.S.I. Securities, Inc. ("MGSI"). The offering of interests in the Program to FNB was made by a series of representations, which were made both verbally by Respondent Stan E. Golub ("Golub") and other representatives, and by means of written offering materials, all of which were distributed by MGSI, acting as Reseda's agent in connection with the offering and sale of the Program. FNB made its decision to purchase interests in the Program in reliance upon those written and verbal representations. FNB alleged that in both the Prospectus and the conversations with representatives of MGSI, the following material misrepresentations, false statements, omissions of fact and false promises were made:

1. That MGSI had already done a thorough "due diligence" review of Reseda, the Program, the sponsors and their affiliates;
2. That the Program featured various "safeguards", the most important of which was that there would be insurance coverage on each contract or lease which serve to protect FNB against loss from defaults, missed payments, physical damage to the automobiles and failure to perfect FNB's security interest in any of the automobiles;
3. That all monies invested by FNB would be safely held "in trust" by City National Bank, a nationally chartered bank with over \$4 billion in assets, until all of the necessary contracts and leases were received, all titles were perfected, and all contracts or leases were fully insured;
4. That Reseda would diligently service the portfolio of contracts and leases;

5. That the underlying borrowers or lessees were financially credit worthy and suitable for the loans or leases in question;
6. That Reseda purchased all contracts and leases from "pre-screened and licensed" or "carefully selected" automobile sellers and lessors; and
7. That Reseda's Program was "the best among many companies offering this type of investment," especially because of Reseda's extensive "experience" and "financial strength".

FNB further alleged that all of the foregoing misstatements and omissions wholly or partially untrue and were material to FNB's decision regarding the purchase of interests in the Program. In addition, FNB alleged it reasonably relied on the above misrepresentations in making its decision to purchase its interests in the Program. In making the foregoing statements and omissions, FNB asserted that MCSI acted with extreme negligence, failed to observe even the minimal standards of care which are customary in the securities industry, and breached its duty to the investing public to perform a reasonable review of the product and its sponsors before offering the Program for sale. Based on the above allegations, FNB asserted claims for securities fraud pursuant to Sections 12(1) and 12(2) of the Securities and Exchange Act of 1933, Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, Sections 25019 and 25401 of the California Corporate Securities Law of 1968, Sections 58-13B-30(A) through (C) of the New Mexico Securities Act; negligent misrepresentation; breach of fiduciary duty, violation of duty as an agent; and negligence.

Respondents Mortgage Government Securities, Inc., M.G.S.I. Securities, Inc. and Stan E. Golub denied the material allegations of the Statement of Claim, alleging that:

1. Claimant First National Bank of Farmington's Statement of Claim failed to state a claim upon which relief can be granted;
2. If any alleged loss or damage was sustained by FNB, it was caused or contributed to by FNB's own fault or conduct, the conduct of FNB's agents or attorneys or by the conduct of others for whom Respondents are not responsible and over whom Respondents have no control;
3. Respondents did not know and in the exercise of reasonable care could not have known of any untruth or omission, if any occurred;
4. FNB's causes of action were barred by the applicable statutes of limitations and by the doctrines of laches, waiver and estoppel;
5. Respondents did not know of, or in the exercise of reasonable care could not have known of and did not have reasonable ground to believe in the existence of any facts by reason of which the liability of a controlled person, if any, is alleged to exist;
6. Respondents relied upon the advice of counsel with respect to

the conduct alleged by FNB;

7. FNB failed to exercise such due diligence with respect to its investment as would be expected of a person under the same circumstances and therefore could not recover from Respondents any losses occasioned by its own lack of due diligence;

8. FNB failed to reasonably mitigate any damage which it may have incurred;

10. Respondents acted in good faith and did not directly or indirectly induce any act or acts constituting any violation or cause of action asserted by FNB;

11. FNB knew of any untruth or omission, if any occurred;

12. Respondents did not market, distribute, offer, sell or solicit the purchase or sale of any security or any investment contract by or to FNB and Respondents were not sellers, solicitors, a proximate cause, a producing cause or a substantial factor in any purchase or sale of any security or investment contract by or to FNB;

13. FNB was experienced and knowledgeable in business and financial matters and investments similar to the one in question; was capable of evaluating the merits and risks of investing in the investment in question; obtained qualified and experienced independent advice with respect thereto; performed its own independent due diligence and detailed investigation and relied on its own due diligence, investigation and evaluation in making the investment in question. As a result, FNB knowingly and voluntarily assumed all risks attendant to investing in the investment in question, did not rely upon Respondents with respect thereto and FNB was not entitled to recover from Respondents any losses sustained in connection with such investment;

14. Respondents did not act as agents for FNB, Reseda or any other party in connection with the transactions described in FNB's Statement of Claim;

15. FNB's investment with Reseda was not a security;

16. Respondents did not engage in any conduct which was a proximate cause or a producing cause of any loss or damage, if any, sustained by FNB; and

17. Respondents objected to the allegations contained in FNB's Statement of the Claim because they referred to Respondents as a group. As a result, Respondents alleged that the allegations contained in the Statement of the Claim were vague, general, and indefinite and failed to apprise each Respondent of the conduct allegedly committed by each Respondent which forms the basis of FNB's cause of action and therefore, deprived each Respondent of the opportunity of preparing to meet FNB's allegations.

#### RELIEF REQUESTED

Claimant First National Bank of Farmington, New Mexico requested the panel enter an award against Respondents Mortgage Government Securities, Inc., M.G.S.I. Securities, Inc. and Stan E. Golub as follows:

1. For rescission of the investment in the Program less a credit for any income actually received therefrom, or, in the alternative;
2. For damages in the principal sum of approximately \$3,000,000.00 and according to proof at the time of the hearing;
3. For interest on any sums so awarded at the maximum legal rate from the date of FNB's investment until the entry of an award;
4. For attorneys' fees and other costs incurred herein; and
5. For such other relief as may be necessary or proper.

Respondents Mortgage Government Securities, Inc., M.G.S.I. Securities, Inc. and Stan E. Golub requested that the panel dismiss the Claimant First National Bank of Farmington's claim with prejudice. In addition, the Respondents requested that the panel award to the Respondents attorneys' fees and costs incurred herein, and such other and further relief, both general and special, legal and equitable, to which they may show themselves justly entitled.

#### OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

Respondents Mortgage Government Securities, Inc., M.G.S.I. Securities, Inc. and Stan E. Golub filed a Motion for Partial Summary Judgment or Award on March 24, 1992. Upon review of the motion and all responses filed therein, the panel denied the motion and notified the parties on May 5, 1992.

Respondents Mortgage Government Securities, Inc. M.G.S.I. Securities, Inc. and Stan E. Golub filed a Motion for Adjournment pursuant to Section 30 of the Code of Arbitration Procedure on May 8, 1992. Upon review of the motion and all responses filed therein, the panel denied the motion. The motion was reasserted at hearing. Upon review of the motion and argument of the parties, the motion was denied.

Respondents Mortgage Government Securities, Inc., M.G.S.I. Securities, Inc. and Stan E. Golub filed a Section 12(b) Motion to Dismiss on or about May 11, 1992 at hearing. Upon review of motion and argument of the parties, the panel denied the motion.

The panel determined that the official record of the proceedings required by Section 37 of the Code of Arbitration Procedure would be kept by the stenographic reporter retained by Respondents.

AWARD

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

1. The Statement of Claim filed by Claimant First National Bank of Farmington, New Mexico is hereby dismissed and denied in its entirety.
2. Each party shall bear its own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed: Ten (10) sessions X \$1,000.00 = \$10,000.00

The National Association of Securities Dealers, Inc. ("NASD") shall retain the claim filing fee of \$250.00 and the hearing session deposit of \$1000.00 previously deposited by the Claimant First National Bank of Farmington. In addition, FNB is liable for and shall pay to the NASD additional forum fees in the sum of \$4,000.00.

Respondents Mortgage Government Securities, Inc., M.G.S.I. Securities, Inc. and Stan E. Golub are jointly and severally liable for and shall pay to the NASD additional forum fees in the sum of \$5,000.00.

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

CONCURRING ARBITRATORS' SIGNATURES

DATED:

Alison K. Schuler  
Alison K. Schuler, Esq.  
Public Arbitrator  
Chairperson

July 13, 1992

Peter J. Broullire, III, Esq.  
Peter J. Broullire, III, Esq.  
Public Arbitrator

July 14, 1992

Carol Jones  
Carol Jones  
Industry Arbitrator

July 14, 1992

Date Served on Parties:

July 17, 1992