

## N.A.S.D. AWARD

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

John T. Higgins

93-00036

Name of Respondent

Marion Molenda

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 5, 1993, Claimant John T. Higgins, who appeared Pro Se, alleged that he was first introduced to J.W. Gant & Associates when he purchased a munibond for \$1,000.00 in 1981 through then broker Liz Maloney and again he contacted Liz Maloney in the fall of 1986 whereby a short time later Claimant was contacted by Respondent Marion Molenda, registered representative of J.W. Gant & Associates, Inc. Claimant further alleged that Respondent Marion Molenda made a lunch appointment where they discussed the possibility of investing into munibonds or a munibond trust and subsequently on their next meeting, Respondent Marion Molenda told Claimant that he believed he could find a bond trust on the secondary market for a higher interest yield than that of a new issue whereby Respondent Marion Molenda told Claimant he had found a trust on the secondary market that was paying 9.2% interest yield. Claimant contended that Respondent assured him that the muni trusts, John Nuveen & Co., was very safe; since protecting his principal was Claimant's utmost concern, and that he could buy units in this trust for \$103.47 each, which reflected the premium, new issue interest yield, and commission. Claimant further contended that being assured this was a safe investment, he told Respondent that he would like to invest \$55,000.00, almost his entire savings. Claimant asserted that Respondent later asked him to move his account with him, to Integrated Resources, which Claimant did and in April, 1989 when he received his statement, he noticed that interest rates in general had gone down, but was alarmed that his unit price had also gone down, at which time, Claimant contacted Nuveen & Co. to find out why the price was so low and if called would the units be payable at current price and was told that the bonds in the trust if called would pay a premium to par value. Claimant further asserted that it was not until November, 1992 that he was advised that the par/unit was \$87.15, instead of investing \$51,800.00 like he was advised, Claimant had only

invested \$45,143.70, the difference was commission and premium. Claimant argued that Respondent had told him that out of his purchase \$55,021.96, \$1,424.50 was for tax, \$1,797.46 was for commission and premium whereby in reality out of Claimant's \$55,021.96; \$1,424.50 was for tax, and \$8,288.00 was for commission and premium, which was 15.5% of original amount after tax, thus Claimant should be reimbursed for the difference between the said commission and premium and the actual commission and premium.

Respondent Marion Molenda, who appeared Pro Se, maintained that he received the account of Claimant John T. Higgins from broker Liz Maloney while working at J.W. Gant & Associates, Inc. in the Fall of 1986. Respondent further maintained that Claimant had purchased several tax free unit investment trusts at par and below. Respondent contended that Claimant was aware of all facts and that purchases were made at market price. Respondent further contended that he is no longer associated with J.W. Gant & Associates, Inc. and has been out of the business since 1990 whereby he has no records, thus the claim should be denied.

#### **RELIEF REQUESTED**

Claimant John T. Higgins requested \$6,490.54 in actual damages plus interest.

Respondent Marion Molenda requested the claim be denied.

#### **AWARD**

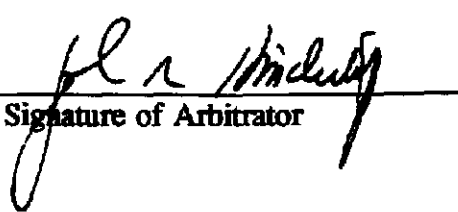
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John M. Hinchcliff was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 13, 1992 and by the Respondent on February 8, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claim of Claimant John T. Higgins against Respondent Marion Molenda is dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant John T. Higgins shall be retained by the NASD, Inc. Respondent Marion Molenda is liable and shall pay to the Claimant the sum of \$75.00, as partial reimbursement.

AFFIRMATION

I, JOHN M. HINCHCLIFF, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

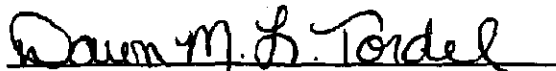
DATE OF DECISION: July 29, 1993

STATE OF: New York

ss:

COUNTY OF: Tompkins

On this 21<sup>st</sup> day of July 1993, before me personally appeared John M. Hinchcliff to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



DAWN M. L. TORDEL  
Notary Public, State of New York  
No. 4974956  
Qualified in Tompkins County  
Commission Expires November 28, 1994

**"ARBITRATOR'S FINDINGS OF FACT"**

Claimant has asserted that he purchased certain Nuveen unit trusts because of a representation by Respondent broker that the commission and premium would be \$3.47 per unit. Claimant also asserts that in 1992, an unidentified person told him that the actual premium and commission was \$16.32 per unit ( $\$103.47 - \$87.15 = \$16.32$ ). In a letter dated June 10, 1993, the parties were asked to supply additional information on this issue, but none was provided. Claimant bears the burden of proving his claim. The hearsay statement of an unidentified person is not sufficient to prove that Claimant was defrauded.

Claimant suggests in his Statement of Claim that he also suffered losses as a result of a decline in the unit value of the trust. It appears from Claimant's Form 1099's that Claimant received at least \$32,429.85 in returned principal. No evidence was submitted to establish the current value of Claimant's investment. However, it appeared that any decline in value resulted from a redemption of the bonds in the trust and a return of the principal as those bonds were redeemed.

Thus, Claimant has failed to establish a claim against Respondent.

Respectfully submitted by : John M. Hinchcliff