

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Fred Viertel

93-00422

Name of Respondents

First American Securities, Inc.
A. Jack Burney, Jr.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 4, 1993, Claimant Fred Viertel, who appeared Pro Se, alleged that he bought Scottsville Ky. Health Fac. Rev. with a trade date of June 12, 1992 and a settlement date of June 19, 1992 from Respondent First American Securities, Inc. by and through Respondent A. Jack Burney. Claimant further alleged that he received a letter from the Trustee's for Scottsville bond dated June 30, 1992, that the owners of the Scottsville Project-Geri Care, Inc. ("Gericare") failed to deposit with the trustee, its monthly loan payment, as required pursuant to its loan, mortgage and security agreement with the City of Scottsville, Kentucky, as the issuer of the bonds. Claimant contended that he was induced to buy a bond at Par with accrued interest that was in default before his purchase date. Claimant further contended that he became aware from the Trustee's letter dated June 30, 1992 that the Scottsville bond would not pay the October 1, 1993 coupon and the bond would have dubious value. Claimant asserted that this is gross negligence on the part of the Respondents in that a call to the Trustee or Mutual Income Trust would have made known the defaulted state of the bonds, at which time, Respondent A. Jack Burney admitted that he would have no trouble checking on the condition of the bonds but that it was an oversight on his part. Claimant further alleged that Respondent A. Jack Burney sold him the Scottsville bond issue as a quality performing bond, and Respondent First American Securities, Inc. failure to supervise, caused Claimant to incur losses, thus Respondents are liable.

Respondent First American Securities, Inc. by and through their counsel, Patrick R. James of Hopkins & Jones, P.A., Little Rock, AR, concurred that this dispute arises out of the purchase of certain Scottsville, Kentucky Healthcare Revenue Bonds (the "Bonds") by the Claimant Fred Viertel on June 12, 1992, for a settlement date of June 19, 1992. Respondent First American

Securities, Inc. further stated that the Claimant is a sophisticated investor who regularly purchases non-rated healthcare bonds such as the Bonds which are the subject of this dispute; the Bonds bore a coupon at the very high rate of 13.5% which clearly indicated this was a risky investment, and the Claimant was aware of this fact. Respondent First American Securities, Inc. contended that as the Claimant admits in his Statement of Claim, subsequent to the purchase, on June 30, 1992, the Trustee for the Bonds generated a letter to bondholders notifying them of certain non-public events, which assertively occurred in late May and June of 1992. Respondent First American Securities, Inc. further contended that it is undisputed that this non-public information was not available and had not been disseminated in the market place at the time the trade occurred on June 12, 1992. Respondent First American Securities, Inc. asserted that they exercised proper due diligence in connection with this transaction and the Bonds were part of two separate purchases made to meet margin calls, of which the first transaction was on May 22, 1992, prior to which Respondent First American Securities, Inc. contacted the Trustee and was informed that all funds were current. At that time no negative information was provided. Three weeks later the customer sold another block of the Bonds, part of which were purchased by the Claimant. Respondent First American Securities, Inc. further asserted that it is unfortunate and regrettable that the Bonds subsequently defaulted, such defaults are risks that are applicable to high-risk, non-rated healthcare bonds such as this which bear a high coupon and the investor, not the broker/dealer should bear the risks of loss.

Respondent A. Jack Burney, Jr. by and through his counsel W. Kirby Lockhart, Esq. of Hargis & Wood, Little Rock, AR, stated that he served as the Account Executive for Claimant Fred Viertel since 1986 and he continues to conduct securities transactions for Claimant to this day, and that over the course of his experience with Claimant, a substantial amount of the securities Claimant has purchased have been high yield speculative bonds. Respondent A. Jack Burney, Jr. further maintained that Respondent First American's Bond Trading Department collected all available information regarding the City of Scottsville, Kentucky, Taxable Health Facilities Revenue Bonds, and was responsible for all research and gathering of information regarding the bonds sold by the company whereby this information was then passed on to the Account Executives. Respondent A. Jack Burney, Jr. contended that he was informed that a trader in the Bond Trading Department phoned the Southside National Bank, the Trustee for the Scottsville Bonds prior to May 22, 1992 and was told that all funds were current and that the issue was not in default. On June 12, 1992, he sold 10,000 to Claimant who was interested in purchasing some high yield bonds. Respondent A. Jack Burney, Jr. further contended that he is truly sorry that Claimant, who remains a good customer of his, is in his current position with respect to these bonds, however, as a sales representative, he properly relied upon the information and due diligence collected and communicated to him by the Bond Trading Department whereby this was not only their responsibility, but their job at Respondent First American Securities, Inc.

RELIEF REQUESTED

Claimant Fred Viertel requested the sum of \$12,375.00 in actual damages.

Respondent First American Securities, Inc. requested the claim be dismissed.

Respondent A. Jack Burney, Jr. requested the claim be dismissed.

AWARD

Pursuant to Sections 25, 13 and 14 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joseph B. Russell, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 2, 1993 and not by the Respondents as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

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:

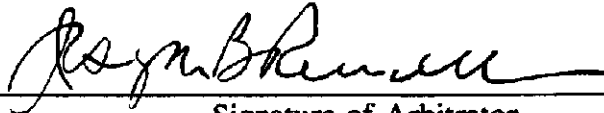
1. Respondent First American Securities, Inc. is liable and shall pay to the Claimant Fred Viertel the sum of \$10,292.50 in actual damages.

Upon full payment of award, beneficial ownership of subject securities is to be transferred to Respondent First American Securities, Inc.

2. Respondent First American Securities, Inc. is liable and shall pay to the Claimant Fred Viertel simple interest at the rate of 9% per annum from June 19, 1992 to the date of payment of the Award.
3. The claim of Claimant Fred Viertel against Respondent A. Jack Burney, Jr. is dismissed in its entirety.
4. The parties shall bear their respective costs, including attorney's fees.
5. The \$400.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Fred Viertel shall be retained by the NASD, Inc. The Respondent First American Securities, Inc. is liable and shall pay to the Claimant the sum of \$400.00, as reimbursement.

AFFIRMATION

I, JOSEPH B. RUSSELL, ESQ., 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.



Signature of Arbitrator

DATE OF DECISION: February 18, 1994

STATE OF: New York

SS:

COUNTY OF: New York

On this 15 day of February 1994, before me personally appeared Joseph B. Russell, Esq. 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.

MARK O. GLUT
Notary Public, State of New York
No. 4005183
Qualified in Queens County
Commission Expires April 20, 1996

