

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

S. N. Phelps & Co.

Name of Respondent

94-01817

Geneva Securities, Inc.

Name of Third Party Respondent

Miller, Johnson & Kuehn, Inc.

REPRESENTATION

For Claimant S.N. Phelps & Co., ("Claimant") appeared George W.M. Thomas, Esq., Vice President and General Counsel of S.N. Phelps located in Greenwich, Connecticut.

For Respondent Geneva Securities, Inc., ("Geneva") appeared LeRoy K. Messenger Chief Operating Officer of Geneva Securities Inc. located in Schaumburg, Illinois.

For Third Party Respondent Miller, Johnson & Kuehn, Inc., ("MJK") appeared Albert A. Woodward, Esq. of the law firm of Maun & Simon, PLC located in Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed on: May 13, 1994.

Claimant's Submission Agreement signed on: May 13, 1994.

Statement of Answer filed by Respondent Geneva on: August 1, 1994.

Respondent Geneva's Submission Agreement signed on: August 25, 1994.

Statement of Answer filed by Third Party Respondent MJK on: October 27, 1994.

Third Party Respondent MJK's Submission Agreement signed on: November 27, 1994.

HEARING INFORMATION

Hearing Dates/Sessions:	August 2, 1995	-	2 sessions
	September 11, 1995	-	2 sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that on April 10, 1991 and August 21, 1991, it purchased from Respondent Geneva 50M and 100M bonds ("Bonds") respectively of Philadelphia, Pa., Logan Square, 11% due 3-1-2016. Claimant further alleged that at the time of delivery the bonds had been previously consented, and as a result the Depository Trust Company in conjunction with the transfer agent, Shawmut Bank, N.A., identified Claimant's bonds as consented and withdrew them from their account.

Claimant alleged that on August 30, 1991 the 11% bonds were substituted for the amended 5 1/2% bonds due 3-1-2016. In addition, Claimant alleged that its clearing agent, Prudential Securities, reversed the entry on September 12, 1991 which left Claimant's customer long and Prudential short the 11% bonds. Claimant also alleged that on July 22, 1993 Prudential again reversed its customer's account substituting 5 1/2% bonds for the 11% and making any interest adjustments for three previous payments on July 30, 1993.

Claimant maintained that it did not become aware of this recurring problem until July 21, 1993 when it was notified by Prudential of the pending reversal of securities and interest. Claimant alleged that Respondent Geneva became aware of the problem when Prudential notified them by letter on September 8, 1993. Claimant further maintained that its account insisted on selling his position of 150M 5 1/2% bonds on April 25, 1994 and that it incurred a loss of \$79,022.91.

Respondent Geneva maintained that the bonds alleged by Claimant to be consented were, in fact, non-consented bonds. Moreover, Geneva contended that Claimant could not establish that the bonds held by Claimant's customer were those specifically purchased by Claimant from Geneva.

Respondent Geneva maintained that Claimant's failure to timely notify Geneva of a problem resulted in the aggravation of the total amount of damages suffered by Claimant's client. Geneva further maintained that, had timely notice been given, all damages attributable to the interest coupon differential would have been eliminated, and it would have been permitted Geneva to consider resolution of the problem by additional secondary market transactions.

Respondent Geneva alleged that Third Party Respondent MJK, the securities dealer from whom Geneva purchased the bonds, was responsible for trading the bonds. Geneva maintained that it relied upon MJK's verbal representations of the description of the bonds which matched that of non-consented bonds. Furthermore, Respondent Geneva maintained that it had no duty to make any inquiry as to the legal description of the bonds beyond that verbally described by MJK.

Third Party Respondent MJK maintained that it knew that the bonds were consented and that Respondent Geneva's representative was specifically told that the bonds being offered were consented bonds. In addition, MJK maintained that the loss which was the subject of the Statement of Claim was not due in any manner to any action or inaction of MJK, but was a result of Geneva either selling bonds that it knew to be amended bonds as unamended bonds or in failing to determine whether the bonds being sold to Claimant were amended or unamended bonds. Moreover, MJK maintained that it was not responsible for Geneva's failure to deliver unamended bonds.

RELIEF REQUESTED

Claimant requested an award for damages in the amount of \$79,022.91, representing the loss incurred.

Respondent Geneva requested that if any amount of damages awarded to Claimant that Third Party Respondent be held liable.

Third Party Respondent MJK requested that the Third Party Statement of Claim be dismissed without any award and that it recover its costs, disbursements and attorney's fees incurred in defending this matter.

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.

AWARD

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

1. All claims asserted against Respondent Geneva be and hereby are dismissed in their entirety.
2. All claims asserted against Third Party Respondent MJK be and hereby are dismissed in their entirety.
3. Each party shall bear their own costs including attorneys' fees.
4. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee previously submitted by Claimant and the \$250.00 non-refundable filing fee previously submitted by Geneva and have assessed the following forum fees:

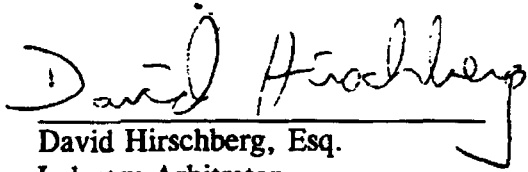
4 Hearing Sessions x \$600.00 = \$2,400.00

Forum fees are assessed against:

1. Claimant be and hereby is liable for the sum of 1,800.00 representing forum fees. Claimant previously deposited \$600.00 with the NASD and, therefore, Claimant is liable and shall pay \$1,200.00 to the NASD.
2. Respondent Geneva is liable for the sum of \$300.00 representing forum fees. Respondent Geneva previously deposited \$600.00 with the NASD and, therefore, is entitled to a \$300.00 refund from the NASD.
3. Third Party Respondent MJK be and hereby is liable and shall pay to the NASD the sum of \$300.00 representing forum fees.

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

ARBITRATORS' SIGNATURES

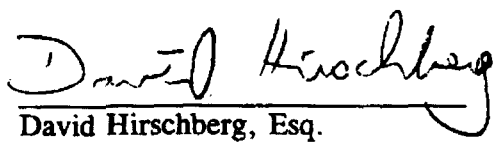

David Hirschberg, Esq.
Industry Arbitrator

John W. Belash, Esq.
Industry Arbitrator

Frank G. Piazza
Industry Arbitrator

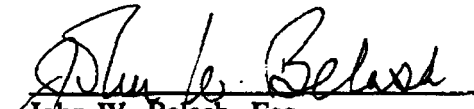
Date of decision: December 20, 1995

I, David Hirschberg, Esq., do hereby affirm that this is my decision in the above-captioned matter.


David Hirschberg, Esq.

ARBITRATORS' SIGNATURES

David Hirschberg, Esq.
Industry Arbitrator

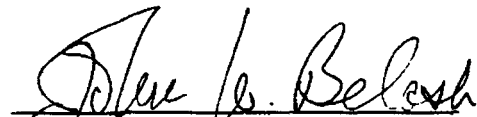


John W. Belash, Esq.
Industry Arbitrator

Frank G. Piazza
Industry Arbitrator

Date of decision: December 20, 1995

I, John W. Belash, Esq., do hereby affirm that this is my decision in the above-captioned matter.

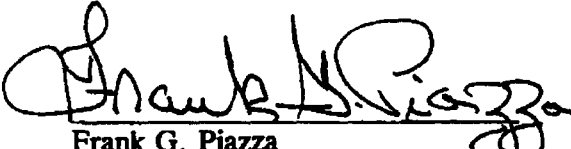


John W. Belash, Esq.

ARBITRATORS' SIGNATURES

David Hirschberg, Esq.
Industry Arbitrator

John W. Belash, Esq.
Industry Arbitrator



Frank G. Piazza
Industry Arbitrator

Date of decision: December 20, 1995

I, Frank G. Piazza, do hereby affirm that this is my decision in the above-captioned matter.



Frank G. Piazza