

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

SouthTrust Securities, Inc.
Timothy W. Bembry

96-01708

Name of Respondents

George Michael Stripling
Patricia Tobin

CASE SUMMARY

In a case filed with National Association of Securities Dealers Regulation, Inc. on April 19, 1996, claimant SouthTrust Securities, Inc. ("SouthTrust"), through its representative and counsel J. Paul Compton, Esq. of the law firm Bradley, Arant, Rose & White, located in Birmingham, Alabama, alleged that respondents George Michael Stripling ("Stripling") and Patricia Tobin ("Tobin") have demanded unreasonable additional remedies in connection with the rescission of a \$39,000.00 purchase of Eaton Vance Prime Rate Reserves (the "Fund") on February 21, 1996, which had a trade settlement date of February 26, 1996. Claimant further alleged that respondents believed that they have been misled by claimant with respect to the nature of the Fund, in particular by suppressing the nature of the Fund as a mutual fund. Claimant also alleged that it had offered to refund the full original amount of respondents' investment and to credit their account with interest at the rate of 7% per annum through the date thereof, in consideration of which respondents would execute a customary release. Claimant asserted that it had made this offer not in admission of any impropriety on its part, but as part of its general corporate policy of seeking to provide customer satisfaction and out of consideration for the long relationship of respondents with affiliates of claimant. Claimant further asserted respondents have refused this offer on several occasions and it had refused to pay the \$10,000 demanded. Claimant also asserted that as of the date of the initial demand by respondents, the market value of the Fund was approximately the same as the original investment.

Claimant contended that on February 20, 1996, respondents met with David Imbusch ("Imbusch") who works for SouthTrust Bank, an affiliate of claimant, and Timothy Bembry ("Bembry") a registered representative of Claimant. Claimant further contended that respondents noted the low rate of interest on certificates of deposit. Claimant also contended that respondents had previously invested funds in certificates of deposit of SouthTrust Bank, an affiliate of Claimant, and have stated that they have over \$1,000,000 on deposit at SouthTrust Bank. Claimant alleged that Bembry described the investment alternative of the Fund, including its investment in pools of commercial loans which are secured and that the Fund was yielding 7%. Claimant further alleged that Bembry advised respondents of a 4 year declining surrender charge. Claimant also alleged that respondents were mailed a prospectus on the Fund, which arrived prior to the trade settlement date.

Claimant asserted that respondents have a significant investment portfolio according to their own admission and were seeking both additional yield and diversification in part because their investment in certificates of deposit exceeded the coverage amount of FDIC insurance. Claimant further asserted that the first concern by respondents with their investments came on March 25, 1996. Claimant also asserted that respondents have met with claimant's senior officers on three occasions and at each meeting no resolution was reached.

By letter dated October 11, 1996, Southtrust Bank of Alabama, N.A. and Timothy W. Bemby sought to be joined as indispensable parties to this dispute, requested that they be made claimants and adopted the Statement of Claim submitted by SouthTrust Securities, Inc.

Respondents Stripling and Tobin (collectively referred to as "respondents"), through their representative and counsel E. Britton Monroe, a sole practitioner located in Birmingham, Alabama, maintained that they did not agree to arbitration and do not consent to arbitration in this matter. Respondents maintained that they have filed a lawsuit in the Circuit Court for Jefferson County, Alabama and intend to pursue their remedies in that forum. Respondents further maintained that they met with Imbusch on or about February 20, 1996, to discuss the possibility of each respondent investing \$19,500.00 in certificates of deposit issued by Southtrust Bank. Respondents also maintained they explained to Imbusch and Bemby that they desired to obtain an investment in which their principal was protected and which the interest return on the money invested would be higher or at least compatible with the highest interest rate being paid by banks and savings and loans on certificates of deposit. Respondents contended that Bemby informed them that claimant had an investment that seemed to fit respondents' needs. Respondents further contended Bemby explained that claimant had an investment which consisted of floating rate loans made by major United States banks to large corporations, and which floating rate loans were collateralized at 150% and which paid an interest rate that followed the prime rate. Respondents also contended that Bemby explained that the investment could be cashed out at any time, but there would be a 3% penalty to get out the first year, down to no penalty to get out after three years. Respondents maintained that Bemby never disclosed that the potential investment was in reality a mutual fund nor did Bemby provide plaintiffs a prospectus on the potential investment.

Respondents further maintained that Bemby failed to provide a prospectus to each investor with regard to the product under discussion at the time of the sales presentation. Respondents also maintained that Bemby made false, misleading, and deceptive statements concerning the nature of the investment and yield. Respondents contended that based on Bemby's representations respondents decided to and did invest \$19,500.00 each in the investment suggested by Bemby. Respondents further contended that on February 24, 1996, they received correspondence from Bemby, from which they learned the product in which they had invested was a mutual fund. Respondents also contended that they received for the first time, a prospectus which clearly showed that the investment was a mutual fund. Respondents maintained that the penalties for early withdrawal were not as stated by Bemby.

Respondents further maintained that on April 4, 1996, they demanded immediate return of their investment, plus interest to date. Respondents also maintained Bemby and the Claimant's representative of claimant's refused to immediately return their investment. Respondents contended that on or about May 8, 1996, claimant, without the knowledge or consent of respondents, liquidated respondents' investment. Respondents further contended that claimant has yet to provide respondents the money liquidated from respondents' investment. Respondents also contended that Bemby did not represent to respondents that the whole group of loans was collateralized at 150%.

RELIEF REQUESTED

Claimant SouthTrust Securities, Inc. and Timothy W. Bembry requested the liquidation of respondents' investment in the Fund, subject to applicable sales charges.

Respondents Stripling and Tobin requested: (1) that claimants return their investment, plus 7% interest from the trade date; (2) \$15,000.00 each in damages.

OTHER ISSUES CONSIDERED & DECIDED

In a letter dated July 24, 1996, claimant advised NASD Regulation Inc. that it has withdrawn its claim without prejudice against respondent George W. Stripling.

The Supreme Court of Alabama ruled that respondents are not required to arbitrate with SouthTrust Bank of Alabama, N.A. Accordingly the attempt to join SouthTrust Bank of Alabama, N.A. as a claimant is moot.

Respondents Stripling and Tobin filed a counterclaim against claimants SouthTrust Securities, Inc. and Timothy W. Bembry. Pursuant to Rule 10302(d) of the NASD Code of Arbitration Procedure, the arbitrator dismissed the counterclaim without prejudice to the counterclaimants pursuing the claims in a separate proceeding.

AWARD

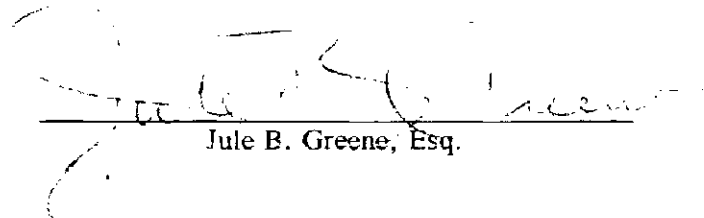
Pursuant to Rule 10302 of the NASD Code of Arbitration Procedure, a single Public Arbitrator, Jule B. Greene, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimant Southtrust Securities, Inc. on July 17, 1996. Respondents George Michael Stripling and Patricia Tobin did not execute a Submission Agreement as required by Rules 10301 and 10302 of the 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. Liquidation by Claimant of respondents' investment Eaton Vance Prime Rate Reserves (the "Fund") satisfies in full Claimant's obligations to respondents in this matter.
2. The \$575.00 filing fee previously deposited with National Association of Securities Dealers Regulation, Inc. by claimant shall be retained by NASD Regulation, Inc.
3. All other relief requests are denied.

AFFIRMATION

I, **Jule B. Greene, Esq.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Jule B. Greene, Esq.

Date of Decision: April 30, 1997