

## AWARD

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Father Jerome G. Gerum and Verna Marie Miller,

Claimants,

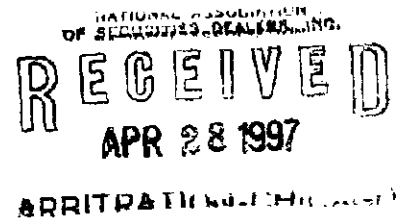
and

No. 96-02043

Peter D. Ziegler and Peter J. Krause,

Respondents.

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### REPRESENTATION OF PARTIES

Claimants Father Jerome G. Gerum ("Father Gerum") and Verna Marie Miller ("Miller") (collectively referred to as "Claimants") were represented at the hearing by Father Jerome G. Gerum. Ms. Miller was not in attendance at the hearing due to illness.

Respondents Peter D. Ziegler ("Ziegler") and Peter J. Krause ("Krause") (collectively referred to as "Respondents") were represented by Charles O'Meara, Esq. of B.C. Ziegler and Co. located in West Bend, Wisconsin.

### CASE INFORMATION

Claimants' Joint Statement of Claim was filed on or about May 13, 1996.

Claimants' Joint Submission Agreement was signed on May 28, 1996.

Respondents' Joint Statement of Answer was filed on or about August 29, 1996.

Respondents' Joint Submission Agreement was signed on August 29, 1996.

Respondents' Motions for Dismissal were filed on or about August 29, 1996.

Claimants' Response to the Motions for Dismissal was filed on or about October 15, 1996.

### HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on April 7, 1997 for one (1) session.

The hearing was held in Milwaukee, Wisconsin.

### **CASE SUMMARY**

Claimants contended that Father Gerum purchased Lake Oaks at DeKoven, Five-Year Extendable Mortgage Revenue Bonds (the "Bonds") through Respondent Krause, who was a registered representative of B.C. Ziegler and Co. ("B.C. Ziegler"). Claimants asserted that B.C. Ziegler's President was Respondent Ziegler. Claimants alleged that Respondents' sale of \$27,000 worth of the Bonds to Father Gerum was an unsuitable investment for a priest with a limited knowledge of investing. Claimants maintained that, after the issuer defaulted in payment of the Bonds, Claimants' \$27,000 investment was only worth \$8,761.50.

Respondents denied the allegations set forth in the Statement of Claim. Respondents contended that the purchase of the Bonds was suitable based on Father Gerum's investment objectives. Respondents alleged that the issuer defaulted in payment because the Lake Oaks Project was not effectively marketed and it never filled with a sufficient number of residents. Respondents asserted that Claimants received the proceeds of the foreclosure action which was a payment equal to 32.45% of the principal amount of the Bonds. Respondents made the following affirmative defenses, including: (1) that the claims of the Claimants are barred by the statute of limitations set forth in Wisconsin Statutes Section 551.59(5), as well as provisions of the securities laws; (2) that the Claimants assumed the risk of their investment after appropriate disclosure in the nature and risk of the investments; and (3) that the NASD's statute of repose, as stated in Rule 10304 of the Code of Arbitration Procedure, has expired, thereby barring the Claimants from proceeding with their respective claims before the NASD, and depriving the NASD of jurisdiction to render an arbitration award over the subject matter of the Claimants' claim.

### **RELIEF REQUESTED**

Claimants requested an award for compensatory damages in the amount of \$18,238.50, which is the difference between Claimants' initial investment (\$27,000) and the proceeds from the foreclosure action (\$8,761.50).

Respondents requested that the Statement of Claim be dismissed on its merits.

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### OTHER ISSUES CONSIDERED & DECIDED

On August 29, 1996, Respondent filed a Motion to Dismiss on the basis that Respondent Ziegler had no connection with the transaction at issue. The Motion to Dismiss further raised the matter of applicable statutes of limitation and the six year statute of repose under Section 10304 of the NASD Code of Arbitration Procedure. After careful consideration of the Motion and Claimants' Response thereto, the undersigned arbitrator denied both motions without prejudice prior to hearing.

Prior to the start of the hearing, Respondents suggested that it would be advantageous to permit a 90-day delay of the hearing so that Claimants could consider the advantages of joining in a class action law suit filed in Racine County, Wisconsin alleging negligent misrepresentation of the Lake Oaks bonds by B.C. Ziegler and Co. and the Episcopal Diocese of Milwaukee, rather than pursuing a remedy through arbitration. Father Gerum, representing himself and Ms. Miller, refused to postpone the matter and wished to proceed to arbitration. Respondents' counsel thereupon withdrew Respondents' Motion to Delay.

### AWARD

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

- (1) Respondents' Motion to Dismiss Peter D. Ziegler as a Respondent is denied. Although Respondent Ziegler was not a party to the sale of bonds to Father Gerum, he was involved to the extent of sending a letter to bondholders, including Father Gerum, dated October 21, 1992 (Respondent Ex. 3) in which he notified them that there were insufficient funds to make the November 1 interest payment. While Respondent Ziegler did not assure a favorable outcome, he did state that B.C. Ziegler and Co. would attempt to provide the best possible solution at the earliest date. It is reasonable for Father Gerum to believe that the President of the company, which had initially sent the advertisement for the 10 1/4% mortgage revenue bonds (Respondent Ex. 10), was a responsible party in offering the bonds for sale;
- (2) Respondents Motion to Dismiss on the grounds that the claim was filed untimely is denied;

- (3) The arbitrator has reviewed both the documentary and testamentary evidence and now finds that the Claimants, Father Jerome G. Gerum and Verna Marie Miller, are entitled to relief from Respondents, Peter D. Ziegler and Peter J. Krause. After receiving a flyer from B.C. Ziegler and Co., Father Gerum sought and was given assurances by his broker that the Lake Oaks at DeKoven project was suitable for his retirement portfolio. The broker told him that he was planning to invest his own mother's funds in these bonds (although it was later learned that this did not occur). Relying on his broker, he purchased \$27,000 worth of these bonds. Father Gerum was an unsophisticated investor who had little understanding of the market and relied totally on the recommendations of his broker. He did not have the understanding to distinguish between rated and unrated bonds. Father Gerum's testimony regarding his telephone calls to Respondent Krause beginning with the receipt of the M&I letter of November 1, 1991 in which he voiced his concern about the Lake Oaks bonds was credible. He relied to his detriment upon the assurances of his broker that his investment was safe. The following damages are therefore awarded:
- (4) Respondents Peter D. Ziegler and Peter J. Krause are jointly and severally liable for and shall pay to Claimants Father Jerome G. Gerum and Verna Marie Miller compensatory damages in the amount of Eighteen Thousand Two Hundred Thirty Eight Dollars and Fifty Cents (\$18,238.50), plus interest at the Wisconsin statutory rate from December 19, 1995 to the date of this award; and
- (5) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically enumerated are hereby denied with prejudice.

#### FORUM FEES

Forum fees are calculated at the rate of \$300 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there was one (1) hearing session x \$300 = \$300 in forum fees. Pursuant to §10332(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$100 and shall **refund** the hearing session deposit in the amount of \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimants.

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Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by B.C. Ziegler and Co.

Pursuant to §10332(c) of the Code, Respondents Peter D. Ziegler and Peter Krause are jointly and severally liable for, and shall pay forum fees in the amount of \$300.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Arbitrator's Signature

Rose Marie Baron  
Rose Marie Baron, Esq.  
Public Arbitrator

4-24-97  
Dated:

For NASD use only:  
Date award served on the parties: April 28, 1997