

ORDER/AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Bancstar, Inc., and Its Subsidiary
Banks, Bank of the Leadbelt, Bank
of the Bootheel and Bancstar One
(Formerly First National Bank of
Callaway County)

and

96-05268

Name of Respondent

First St. Louis Securities, Inc.

REPRESENTATION OF PARTIES

Bancstar, Inc., and Its Subsidiary Banks, Bank of the Leadbelt, Bank of the Bootheel and Bancstar One (Formerly First National Bank of Callaway County) ("**Claimant**") were represented by Donald J. Meehan, Esq., of Moline & Shostak, LLC, St. Louis, Missouri.

First St. Louis Securities, Inc. ("**Respondent**") was represented by Kenton E. Knickmeyer, Esq., of Thompson Coburn, St. Louis, Missouri.

CASE INFORMATION

Claimant filed the Statement of Claim on or about November 25, 1996, and signed the Submission Agreement on November 25, 1996. Claimant filed an Amendment to the Statement of Claim dropping paragraph 5 of the Statement of Claim on or about January 24, 1997.

Respondent filed a Statement of Answer on or about January 10, 1997, and signed the Submission Agreement on February 12, 1997. Respondent filed its Answer to amended Statement of Claim on or about February 13, 1997.

HEARING INFORMATION

A telephonic hearing was held with the arbitrators on December 9, 1997 which lasted for one (1) session.

CASE SUMMARY

Claimant alleged that: In the fall of 1990, Respondent brought up the idea of an investment by Claimant's subsidiary banks (Bank of the Leadbelt, Bank of the Bootheel, and First National Bank of Callaway County) in CMO's with the then President of Terre Du Lac Bankshares, Inc. (BancStar is the successor in interest to Terre Du Lac Bankshares, Inc.); Respondent Represented to Claimant that the CMO's would provide a better yield than prior investments and would be rated "AA" by Standard & Poor's Corporation ("S&P"); on November 30, 1990, Respondent solicited Claimant for the purchase of selling bonds known as "American Home Acceptance Corporation Collateralized Mortgage Obligations, Series 1990-A-AHAC" ("AHAC") to the subsidiary banks of Claimant; in a number of telephone conversations with Claimant in November, 1990, Respondent represented that the AHAC bonds would be 90% government guaranteed; at no time did Respondent inform Claimant that the FHA insurance coverage was limited to 10% of the aggregate principal amount of the mortgage loans; on December 3, 1990, Claimant met with Respondent at which time the same representations were made; relying on the representations made by Respondent, on December 3, 1990, Claimant purchased \$620,000 of the AHAC bonds through First National Bank of Callaway County ("Callaway") and \$413,000 of the AHAC bonds through Bank of the Bootheel ("Bootheel"); on December 12, 1990, at Respondent's instruction, Callaway transmitted to Raucher Pierce Refsnes, Inc., the placement agent, the Form of Investment Letter for the purchase of the AHAC bonds; neither Claimant nor any of its subsidiary banks received the Private Placement Memorandum and its Supplement dated December 7, 1990 for the placement of the AHAC bonds until sometime after December 3, 1990; Callaway was forced to transfer the AHAC bonds to Bank of the Leadbelt ("Leadbelt"); Claimant received S&P's report downgrading the AHAC bonds from "AA" to "B" in August, 1994, which was the first notice of a potential problem with the financial security of the AHAC bonds; Respondent breached its fiduciary duty to Claimant; Respondent provided a pre-marketing memorandum to Claimant that was marked "For Internal Use Only - Not for Distribution" with the intent that Claimant would rely on same; Respondent's recommendations and conduct were inappropriate and not suitable for Claimant's subsidiary banks' investment portfolios; Respondent's conduct constituted negligence and violated Article III, Section 2 of the NASD Rules of Fair Practice; Respondent is vicariously liable for the actions and inactions and conduct of its registered representative while he was in its employ; and Respondent is liable for failing to supervise its registered representative.

Unless otherwise admitted in its Answer, Respondent denied the allegations set forth in the Statement of Claim. Respondent stated that: Claimant's Claim is barred by the statutes of limitation applicable to any possible legal theory of recovery which may be advanced by Claimant; claimant lacks standing to assert any Claim against Respondent because it neither purchased nor sold any of the securities and was not a party to any of the transactions alleged to give rise to the Claim asserted in the Statement of Claim; Claimant has not sustained any damage because it resold its AHAC securities at the same price at which it purchased the securities; Claimant Bank of the

Leadbelt's purchase of the AHAC securities was an unsolicited transaction in which Respondent participated as a broker solely as an accommodation to its customer, First National Bank of Callaway County; Respondent made no representations to Bank of Leadbelt concerning the AHAC securities, and received no commission or other compensation from the purchaser or the seller in that transaction; Claimants are estopped from asserting that they relied on any statements or representations other than those statements and representations which appear in the Private Placement Memorandum (the Memorandum") and the supplements thereto dated December 7, 1990; Claimants are estopped to assert that the securities were not suitable investments for them based on Claimant's acknowledgments in the Investment Letters executed by them (on December 12, 1990) that they received and read the Memorandum and supplements thereto, and Claimant's assertion that it had received and reviewed the Pre-Marketing Memorandum; Claimants were at all times informed and aware that the securities being purchased by them were being purchased in a private placement, that the securities were not and would not be registered, and that they were, therefore, illiquid; as a consequence of the Office of Comptroller of Currency's ("OCC") criticism of the investment in the Bonds, Callaway sold its Bonds to another BancStar, Inc. Subsidiary, Leadbelt; on November 3, 1996, more than five (5) years after reviewing the Memorandum and Supplement and receiving the OCC's report, Claimants filed this arbitration against Respondent in recommending an investment in the Bonds; and Respondent was informed that, as of the time of the Claim, there has not been a default in making any payment due in respect of the securities, and Claimants have not suffered any loss.

RELIEF REQUESTED

Claimant requested an award in the amount of : \$371,900.00 as compensatory damages; interest; and costs and attorneys' fees.

Respondent denied the claims asserted against them and asked the panel to award it costs and attorneys' fees, and such other and further relief as the panel deemed appropriate.

OTHER ISSUES CONSIDERED & DECIDED

Respondent filed a Motion to decline Jurisdiction based on the language contained in paragraph 5 of Claimant's Statement of Claim. Claimant responded to the motion by Amending the Statement of CLAIM to delete the relevant language in paragraph 5 of the original Statement of Claim. The motion was denied.

Respondent filed a Motion for Leave to File an Amended Answer to Claimant's Amended Statement of Claim. After review of the motion and response, and deliberation, the panel granted the motion.

Respondent Filed the following motions: Motion to Dismiss Statement of Claim for Failure to State a Claim and Suggestions in Support; Motion to Dismiss Claimant Bank of the Leadbelt and Suggestions in Support; Motion to Dismiss Claimant Bank Star One and Suggestions in Support; Motion to Dismiss BancStar, Inc. For Lack of Standing and Suggestions in Support; Motion to Dismiss Statement of Claim Based on the Statute of Limitations and Suggestions in Support; and Request for Pre-Hearing Conference. Claimant responded to the motions, and a telephonic hearing was set for December 9, 1997 for the parties to present oral argument to the arbitrators on the outstanding motions.

AWARD

After considering the pleadings, the motions and responses, and oral argument presented by counsel on December 9, 1997, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

After reviewing the Motion to Dismiss Statement of Claim based on the Statute of Limitations, the Claimant's Response to the Motion and oral argument made during a telephone conference on December 9, 1997 before the entire panel, it is the unanimous decision of the panel to Grant the Respondent's Motion and Order the Claim dismissed based on the Statute of Limitations. The cost for the telephonic hearing of \$750 shall be assessed against the Claimant.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session. There was one session x \$750 = \$750 in forum fees. Pursuant to Rule 10332(b) of the 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 Rule 10332© of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to Rule 10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350.

NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the amount of \$750 previously deposited by the Respondent. **Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

Thomas A. Cipolla
Thomas A. Cipolla
Public Arbitrator, Presiding Chair

/s/

February 16, 1998

Julius Z. Frager
Julius Z. Frager
Public Arbitrator

/s/

February 17, 1998

Richard D. Link
Richard D. Link
Industry Arbitrator

/s/

February 19, 1998