

MSRB

MUNICIPAL SECURITIES RULEMAKING BOARD

2000
AUG 97

ALC

In the Matter of the Arbitration between :
:
BRYAN A. DAWBER TRUST UAD 2/12/76 :
FBO BRYAN A. DAWBER, :
:
Claimant, :
:
v. :
:
SMITH BARNEY, HARRIS UPHAM & CO., INC., :
Respondent. :

AWARD

MS 89-102
SC9-041

The Undersigned, pursuant to section 31 of MSRB rule G-35, hereby states as follows:

CASE SUMMARY

Claimant alleges that Respondent failed to provide him with complete information in connection with his purchase of certain Alachua County, Florida Mortgage Revenue Bonds, Series 1985, (Atrium Apartments Project), which went into default approximately one year after his purchase of \$10,000 of same at a premium price of 107.60. Claimant alleges that he purchases only insured "A" rated bonds or the equivalent and that Respondent's representative informed him at the time of sale that, although the aforementioned bonds were not "A" rated or insured, they were backed by the National Housing Partnership and by a debt service reserve fund. Claimant also alleges that Respondent failed to disclose, however, that the National Housing Partnership was funding the bond project on a voluntary basis and had been making up shortfalls in revenues since the project's inception. In addition, Claimant alleges that the debt service reserve fund contained only an amount adequate to pay two interest payments. Claimant questions the premium price that he was charged and contends that Respondent should have been aware of the aforementioned information prior to selling the bonds, arguing that he never would have purchased them had he been aware of same.

Respondent maintains that Claimant is a wealthy, sophisticated investor who had a substantial portfolio of bonds and who had purchased and/or held unrated or low-rated bonds prior to his purchase of the bonds in dispute. Respondent argues that Respondent's representative discussed with Claimant at the time of sale the fact that the bonds had a substantially higher yield than the other bonds he had purchased from Respondent, were non-rated, and would involve some speculation in exchange for the higher return. Respondent also argues that Claimant was never told at any time that the developer or the reserve fund would

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guarantee the project's success. In addition, Respondent disputes Claimant's assertion that any shortfall in project funds existed at the time of Claimant's purchase and contends that the premium price charged to Claimant reflected the market value of the bonds at the time. Respondent contends that Claimant did not complain until the bonds were declared in default and that Claimant fails to show any fraudulent or improper conduct on the part of Respondent.

RELIEF REQUESTED

Claimant requests that Respondent pay him the difference between what he paid for the bonds and what he received from the sale of the bonds two years later, or \$7,127, plus his costs of arbitration, or approximately \$235. Respondent requests that the claim be dismissed in its entirety.

AWARD

The undersigned arbitrator reviewed the controversy between the parties set forth in submissions to the arbitrator signed by Claimant on November 20, 1989 (filed with the MSRB on December 7, 1989) and by Respondent on February 20, 1990. The undersigned, having considered the matter solely upon the pleadings and evidence submitted by the parties, pursuant to section 34 of MSRB rule G-35, has determined, in full and final resolution of the issues submitted for determination, that Claimant's claim shall be dismissed in its entirety and that Claimant's arbitration deposit shall be retained by the MSRB.

Public Arbitrator

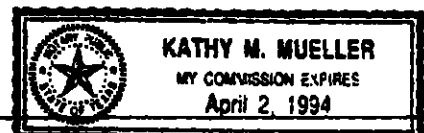
Dated: 8/20/90

STATE OF
COUNTY OF

Texas
Harris

ss.:

On this *20* day of *August*, 19*90*, before me personally appeared _____ to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



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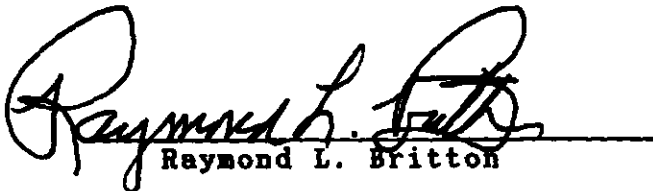
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Raymond L. Britton

Dated: 8/20/90

STATE OF *Texas*
COUNTY OF *Harris*

ss.:

On this *20* day of *August*, 19*90*, before me personally appeared Raymond L. Britton to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

