

MSRB
MUNICIPAL SECURITIES RULEMAKING BOARD

MAR 9 1990

FILED

In the Matter of the Arbitration between

Claimant,

v.

RICHARDSON GREENSHIELDS SECURITIES INC.,
Respondent.

AWARD

MS 89-34

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

CASE SUMMARY

Claimant alleged that Respondent failed to fulfill its duty as her investment advisor in connection with the purchase and sale of certain Polk County, Florida Industrial Development Bonds ("the bonds"). Claimant alleged that in December 1982 Respondent's agent solicited Claimant to move her account at another brokerage firm to Respondent. Claimant also alleged that she was not a sophisticated investor and that her account with Respondent was to be a conservative, non-discretionary account. Claimant contended that she purchased the bonds on February 10, 1983 upon the advice of Respondent and, on December 12, 1983, the bonds went into default. In addition, Claimant alleged that in January and February 1984 she wrote to and met with Respondent on various occasions inquiring as to whether or not the bonds were in default and whether or not she should sell them. Claimant alleged that Respondent failed to timely respond to her inquiries, gave her conflicting information and advice, and, on February 20, 1984, sold the bonds without her permission. Claimant contended that Respondent's bad advice, willful or negligent withholding of material information, and failure to give her advice when it was crucial to her making informed decisions caused her a loss on the bonds.

Respondent did not contest the merits of Claimant's claim but argued that the claim is time-barred by the Florida statute of limitations and that Claimant is barred from recovery by res judicata in that she is bound by the final judgment in a class action lawsuit in the United States District Court for the Northern District of Georgia entitled Sheftelman v. Jones, et al., Civil Action no. 184-CV-472-RCF ("the class action"), brought on behalf of purchasers of the bonds against various brokerage firms including Respondent, and others.

In response, Claimant argued that there has been a continuing course of conduct, from the moment she was solicited by Respondent until the present time, whereby Respondent failed to be forthright with information and deliberately withheld material information from her, that such conduct constituted fraud on the part of Respondent, and that Claimant is entitled to an equitable tolling of the statute of limitations. Claimant also argued that she had not received adequate notice of the class action and is not barred by res judicata since she was denied procedural due process.

Respondent argued that the facts in this case did not warrant an equitable tolling of the statute of limitations, pursuant to Florida law. In addition, Respondent argued that the court in the class action had determined that adequate notice had been given to class members and the arbitrators were without authority to review the court's determination. Respondent also argued that Claimant was twice put on actual notice of the class action--once, upon receipt of Respondent's Statement of Answer in this matter--and could have requested exclusion from the class between August 7, 1989 and October 2, 1989, but failed to do so. Respondent contended that since Claimant did not affirmatively request exclusion from the class in accordance with the court's order, under Federal law, she is bound by the final judgment in the class action regardless of whether she now claims not to have received actual notice.

RELIEF REQUESTED

Claimant calculated her damages, including interest, as of the January 12, 1990 hearing date, to be as follows: 1) a \$15,500.71 out-of-pocket loss or, 2) a loss of \$22,832.48, based on the argument that, under Florida law, she is entitled to rescission of the contract or to damages for the loss plus statutory interest, if she has sold the bonds. Claimant also argued that she is entitled to her attorney's fees and costs under Florida law. Respondent requested that the claim be dismissed with prejudice.

AWARD

On January 12, 1990, in Miami, Florida the undersigned arbitrators heard the controversy between the parties set forth in submissions to the arbitrators signed by Claimant on January 11, 1989 (filed with the MSRB on March 27, 1989) and by Respondent on May 15, 1989. The arbitration panel, having considered the pleadings, the testimony and the evidence presented at the hearing, has determined in full and final resolution of the issue submitted for determination as follows:

1. Claimant's claim shall be dismissed with prejudice.
2. The parties shall each bear their respective costs and attorney's fees.
3. Pursuant to section 2 of MSRB rule A-16, \$400 of Claimant's \$425 arbitration deposit shall be retained by the MSRB as forum fees and \$25 shall be refunded to Claimant inasmuch as it was an overpayment of the deposit required under section 1 of rule A-16.

Betram S. Bernar

Betram S. Bernar

Frank B. Preston, Jr.

Frank B. Preston, Jr.

Paul L. Sipp, Jr.


Paul L. Sipp, Jr.

Dated: March 7, 1990

STATE OF *Florida*
COUNTY OF *Falm Beach*

ss.:

On this *1st* day of *March*, 1990, 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.



NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPI. OCT. 15, 1991
BONDED THRU GENERAL INV. UND.

STATE OF
COUNTY OF

ss.:

On this *6th* day of *March*, 1990, 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.



NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. AUG. 25, 1990
BONDED THRU GENERAL INV. UND.

STATE OF *Florida*
COUNTY OF *St. Johns*

ss.:

On this *7th* day of *March*, 1990, 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.

