

MSRB
MUNICIPAL SECURITIES RULEMAKING BOARD

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FEB 28 1990

MSRB

In the Matter of the Arbitration between :

DAVID W. KESTERSON, :

Claimant, :

v. :

BAILEY & ASSOCIATES, INC., :

Respondent. :

AWARD

MS89-39

SC9-019

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

CASE SUMMARY

Claimant purchased from Respondent five (5) \$5,000.00 Loudon County, Tennessee, Health Center H & E Bonds ("the Bonds") on or about March 1, 1982. Claimant alleged that he never received the September 1, 1983, interest payment for the Bonds. Claimant alleged that in June, 1983, at Respondent's request, he took the Bonds to Respondent's offices since the Bonds were going to be reissued at a lower interest rate. Claimant also alleged that on July 5, 1984, he went to Respondent's offices and picked up a \$25,000.00 check for the principal amount of the Bonds. Claimant alleged that he did not receive the September 1, 1983, interest payment on the Bonds because he had already deposited the Bonds with Respondent and did not have the Bonds in order to clip the coupons.

Respondent argued that First American National Bank of Nashville, Tennessee, disbursed all funds directly to customers and had previously notified Claimant that all of the September 1, 1983, coupons on the bond issue had been presented and paid. Respondent also argued that Claimant had presented no written proof that Respondent had possession of the Bonds in the fall of 1983 when the coupon was paid, as alleged. In addition, Respondent contended that its records for 1983 and 1984 showed no payments to Respondent of principal or interest on the Bonds. Respondent argued that Claimant should have had the Bonds in his possession in September, 1983, since they did not go into default until March 1, 1984. Respondent argued that, in any event, it did not have possession of the Bonds at the time the September 1, 1983, coupon should have been clipped and presented for payment.

RELIEF REQUESTED

Claimant requested payment of six (6) months' interest on the five (5) \$5,000.00 Bonds at the rate on the Bonds at the time of

purchase (16.5%), plus interest on this amount from September 1, 1983. Respondent maintained that Claimant's alleged loss was not its responsibility.

AWARD

The undersigned arbitrator reviewed the controversy between the parties set forth in submissions to the arbitrator signed by Claimant on January 9, 1989 (filed with the MSRB on April 6, 1989) and by Respondent on May 18, 1989. The undersigned, having considered the matter solely upon the pleadings and evidence submitted by the parties, pursuant to section 34(f) of MSRB rule G-35, has determined, in full and final resolution of the issues submitted for determination, that:

1. The claims of the Claimant shall be dismissed in their entirety.
2. Pursuant to section 2 of MSRB rule A-16, Claimant's \$100 arbitration deposit shall be retained by the MSRB as forum fees.



Anne E. Krehbiel

Dated: February 27, 1990

STATE OF
COUNTY OF

OHIO
WARREN

ss.:

On this 27th day of February, 1990, before me personally appeared Anne E. Krehbiel to me known and known to me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.



JUDITH S. FISHER
Notary Public, State of Ohio
Commission Expires June 25, 1995