



In the Matter of the Arbitration between	:	
	:	
	:	AWARD
Claimants,	:	
v.	:	
	:	MS 89-48
BOETTCHER & COMPANY, INC. and	:	
LAURENCE G. ALPERT,	:	
Respondents.	:	

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

#### CASE SUMMARY

Claimants alleged that Respondents failed to perform due diligence prior to recommending the purchase of certain City of Arvada, Colorado Industrial Development Revenue Bonds (Northwest Professional Group Project) Series 1983 and City of Littleton, Colorado Industrial Development Revenue Bonds (Creekside Southwest Joint Venture Project) Series 1982A and Series 1982B which subsequently went into default. (The Arvada bonds were purchased by Claimants on August 18, 1983 and went into default on or about October 5, 1987; the Littleton bonds were purchased by Claimants on November 8, 1985 and went into default on or about December 3, 1987.) Claimants also charged Respondents with unprofessional conduct, lack of communication, misinformation, and lack of regard for the interests of their investing clients. Respondents maintained that they fulfilled their due diligence obligations, that events beyond their control resulted in the bonds' default, and that all salient features of the bonds, including bondholders' risks, were disclosed in the Official Statements.

#### RELIEF REQUESTED

Claimants requested damages of \$150,000 principal plus \$51,750 interest on the Arvada Bonds and \$75,000 principal plus \$28,406.28 interest on the Littleton Bonds for a total damage claim of \$305,156.28. Respondents requested that the Statement of Claim be dismissed.

#### AWARD

On November 17, 1989, in Denver, Colorado, the undersigned arbitrators heard the controversy between the parties set forth

in submissions to the arbitrators signed by Claimants on April 13, 1989 (received by the MSRB on May 18, 1989) and by Respondents on July 14, 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. The Claimants were sophisticated investors experienced in a number of different kinds of investments;

2. The Respondents did sufficient due diligence on both bond issues;

3. The Official Statements issued in connection with both bond issues adequately disclosed the salient features of the bonds, including bondholders' risks. The Official Statement issued in connection with the Arvada Bonds was furnished or made available to the Claimants. By reason of the secondary nature of the transaction and passage of time after issuance of the bonds, the Respondents had no duty to provide the Claimants with a copy of the Official Statement issued in connection with the Littleton Bonds;

4. Communications by the Respondents to the Claimants concerning both bond issues did not amount to a misleading recommendation, or assurance or guaranty that the bonds of either issue would be paid when due;

5. The fact that the Claimants resided outside the United States for a portion of the period material to the issues in this case did not increase the burden of the Respondents' due diligence or communication with respect to the bonds beyond that which would apply to persons similarly situated within the United States;

6. Obligations to enforce bond and indenture covenants for which these Respondents have been charged by the Claimants following default on the bonds were in fact and in law obligations of the respective bond trustees, whose actions or failures to act were not before the arbitrators;

7. While there were instances of failure to respond by the Respondents, particularly the failure of certain individuals designated by the Claimants to respond to specific questions, those failures to respond were not breaches of a legal duty (the arbitrators do not pass upon the desirability of responses that might be made in the interest of enhancing public relations); and

8. No evidence of unprofessional conduct or lack of regard for the interests of investing clients inconsistent with the legal obligations of the Respondents was found.

THEREFORE, the claims of the Claimants are hereby dismissed in their entirety. Claimants' \$750 arbitration deposit shall be refunded to Claimants by the MSRB, pursuant to section 2 of MSRB rule A-16.

#### OTHER ISSUES

On their April 13, 1989 submission to the arbitrators and in their pleadings, Claimants also named as Respondents in this matter the following Boettcher & Company, Inc. employees: Thomas E. Meade ("Meade"), William L. Bornt ("Bornt") and William L. Wedum ("Wedum"). In their Statement of Answer and at the hearing, Respondents' counsel moved that the arbitrators dismiss the claims of the Claimants against Messrs. Meade, Bornt and Wedum. Upon such motion at the hearing, and certain representations made by Respondents' counsel, Claimants withdrew their claims against Messrs. Meade, Bornt and Wedum. In addition, Claimants requested at the hearing that the arbitrators allow them to amend their pleadings to request damages of \$15,000 principal plus interest on certain Villages of Castle Rock Metropolitan District No. 4, Douglas County, Colorado Bonds. Pursuant to section 29(b) of MSRB rule G-35, the arbitration panel denied Claimants' request without prejudice to the Claimants' right to seek a separate remedy as to that bond issue. Accordingly, the claims of the Claimants on said Villages of Castle Rock Bonds, such as they may be, were not made a part of this proceeding.

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Public Arbitrator

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Public Arbitrator

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Industry Arbitrator

Dated:

JAN 9 1990

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M.S.R.B.

STATE OF WASHINGTON  
COUNTY OF KING

ss.:

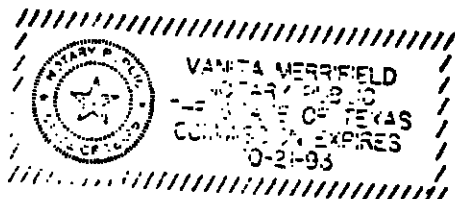
On this 3rd day of January, 1990, before me personally appeared \_\_\_\_\_ to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Isabel James

STATE OF Texas  
COUNTY OF Dallas

ss.:

On this 4 day of January, 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.



Vanita Merrifield

STATE OF  
COUNTY OF

Mo  
St. Louis

ss.:

On this 8 day of Jan, 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.

Patsy R. White

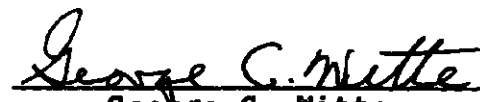
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William N. Appel

  
George C. Witte

  
Robert J. Beck

Dated:

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JAN 9 1990

M.S.R.B.