



SC9-024

RELIEF REQUESTED

Claimants request actual damages in an amount in excess of \$4,000 plus commissions, costs, interest and attorney's fees. Respondent requests that the Statement of Claim be dismissed.

ANALYSIS

THE CLAIMS

Claimant's basic claim is that William J. Pudwell ("Pudwell"), agent of Respondent Dain Bosworth, Inc., made material misrepresentations, negligently and/or fraudulently, on which Claimants relied to purchase two Charter House bonds (totalling \$10,000) which lost sixty percent of their value through bankruptcy. Claimant also alleges that Pudwell breached a "fiduciary duty."

Respondent Dain Bosworth, Inc. denies the alleged misrepresentations or the existence of any fiduciary duty.

FINDINGS OF FACT

On December 19, 1989, in Minneapolis, Minnesota, the undersigned Arbitrator heard the controversy between the Parties set forth in submissions to the arbitrator signed by Claimants on June 5, 1989 (filed with the MSRB on July 3, 1989) and by Respondent on August 29, 1989.

1. Claimant claims he had never talked with Pudwell prior to a telephone call Pudwell placed on July 3, 1985, to offer two \$5,000 Charter House bonds. Claimant claims he told Pudwell he would consider only municipal bonds which were "absolutely safe" and backed up, in the sense of being "guaranteed" as to both principal and interest against any loss. Claimant claims he bought the bonds during that phone conversation because Pudwell said Charter House was fully guaranteed by the City of Rochester, the Methodist Hospital and the Mayo Clinic and thus was "good as gold". According to Claimant, he never again spoke to Pudwell except once, after the investment soured, when he "bumped into" him at the Court House.

2. Claimant's version of the facts is incredible in some respects, a distortion in others, and completely false in others.

a. Claimant had been involved in various business enterprises (trucking, ranching, cattle raising, securities), in which he achieved substantial success and profit over a period of fifty years.

b. The evidence is clear that Claimant discussed municipal bonds with Pudwell in person and by telephone on a number of occasions over a period of months before the Charter House offer.

c. Claimant admitted in testimony that he had been engaged in securities investments, including municipal bonds, for at least five years before the Charter House conversation. He admits to having purchased well over one hundred thousand dollars in such bonds. Prior to July 3, 1985, he had dealt with and received securities information and advice from other brokerage and financial professionals. In this regard he had told Pudwell some months earlier (and admitted in arbitration) that he had purchased municipal bonds in \$50,000 amounts. During their several conversations, Claimants used terms, concepts and expressions which clearly reflected his considerable knowledge of the various kinds of securities, transactions, risks, yields, etc.

d. In response to Claimant's requests for bonds he would consider, Pudwell offered Charter House, which met the former's specifications for tax-free income from municipal bonds expected to have less risk than common stock for various reasons including real estate mortgage.

e. On July 3, 1985, Pudwell was an elected Commissioner of Olmstead County and he had lived all his life in Rochester, Minnesota. He has never been accused of negligent or fraudulent dealings by anyone else.

f. The misrepresentations attributed to Pudwell were ridiculous to any but the most naive investor and were disclaimed on the bonds which Claimant received the week after the purchase.

g. When Claimant later expressed concern about the investment, Pudwell offered to buy the two bonds back at par, but Claimant declined.

EVALUATION

1. As to the misrepresentation claim, the evidence does not show that Pudwell made the misrepresentations alleged but if he had, it is improbable that a person of Claimant's experience in business and securities dealing would have accepted them to be true or would have relied on them.

In essence, Claimant claimed to be a gullible, naive prospect victimized by a con artist for a quick sale. Claimant made the purchase with his eyes open and without any misrepresentations by Pudwell, Respondent's agent.

2. As to the claimed breach of fiduciary duty, Claimant did not even assert a basis for any kind of fiduciary duty.

3. There was no showing of a duty to provide a prospectus for the bonds which had been issued several years earlier.

AWARD

The Arbitrator, 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:

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

Public Arbitrator

Dated: 1/24/90

STATE OF
COUNTY OF

KENTUCKY
FAYETTE

ss.:

On this 24th 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.

Maup D. [Signature]
Notary Public,
Ky, State at Large
My comm exp: 3/31/92

3. There was no showing of a duty to provide a prospectus for the bonds which had been issued several years earlier.

AWARD

The Arbitrator, 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:

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



Nicholas Duda, Jr.

Dated: 1/24/90

STATE OF ~~KENTUCKY~~
COUNTY OF ~~FAYETTE~~

ss.:

On this 24TH day of JANUARY, 1990, before me personally appeared Nicholas Duda, Jr. 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.


Mary D. Edwards
Notary Public,
Ky, State at Large
My comm exp: 3/31/92