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APR 8 1990

In the Matter of the Arbitration Between

Claimants,

v.

NORRIS & HIRSHBERG, INC. and GARY L. KANE,

Respondents.

AWARD
MS89-64
SC9-032

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

SUMMARY OF THE ISSUES DECIDED

- I. Whether or not Claimants were induced to purchase the \$5000.00 City of Indianapolis, Indiana 13 $\frac{1}{2}$ Economic Development First Mortgage Revenue Bond, Series A dated September 1, 1980 by means of untrue statements of material facts or omissions to disclose material facts on the part of Respondents.
- II. Whether or not Claimants were induced to purchase the foregoing municipal bond by means of false and misleading statements by the Respondents relating to alleged acts of default under the bond indenture.
- III. Whether or not the Claimants were induced to purchase the foregoing municipal bond by means of false, fraudulent and misleading inducements on the part of the Respondents.
- IV. Whether or not the Claimants are barred from pursuing their claim against the Respondents under the statute of limitations set forth in O.C.G.A. §10-5-14(d).
- V. Whether the Claimant's particular expertise in the health care industry made him particularly aware of the special risks associated with investments in non-rated health care revenue bonds, and in that regard, whether he was obligated to and failed to make his own independent evaluation of those risks and was accordingly negligent in performing his own due diligence examination.
- VI. Whether or not the course of business between Claimants and Respondents reflected that Claimants had a prior history of making their own review of prospectuses and related financial matters prior to making decisions whether to purchase municipal bonds such that the Claimants were or should have been aware of the risk of loss associated with the municipal bonds in which they invested regardless of the Respondents' alleged acts and omissions.

RELIEF REQUESTED

Claimants requested that, upon Claimants' delivery of the securities to Respondents, Respondents be made jointly and severally liable to pay to Claimants \$5,150 plus accrued interest at 18.06% from September 1, 1986 to September 1, 1990. Claimants later amended their claim to lower the amount claimed to \$3,162.93 plus accrued interest as described above, stating that they submitted the foregoing municipal bond to the bond trustee for settlement against the proceeds of the foreclosure sale of the facility financed by the bonds.

Respondent requested that Claimants' claim be dismissed.

AWARD

The undersigned arbitrator reviewed the controversy between the parties set forth in submissions to the arbitrator signed by Claimants on July 10, 1989 (filed with the MSRB on August 11, 1989); by Respondent Norris & Hirschberg, Inc. on September 21, 1989; and by Respondent Gary L. Kane on September 27, 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 the claims of Claimants are hereby dismissed in their entirety.

The undersigned finds that Respondents did not induce the Claimants to purchase the municipal bond at issue in this arbitration by means of untrue statements of material facts or by omissions to disclose material facts, or that the Respondents used false and misleading statements or engaged in false, fraudulent and misleading inducements in an effort to encourage the Claimants to purchase the municipal bond. The undersigned further finds that Claimant evidenced a particular expertise in the health care industry which made him particularly aware of the special risks attendant upon investments in non-rated health care revenue bonds such that he was not relying wholly upon the knowledge, experience, or particular expertise of the Respondents in making this investment. Moreover, the course of business between the Claimants and the Respondents reflected that the Claimants had had a prior history of making their own review of prospectuses in related financial matters prior to making decisions whether to purchase municipal bonds. Accordingly, they were or should have been aware of the risk of loss associated with the municipal bonds in which they invested. The undersigned further finds that the Respondents did not intentionally or negligently fail to disclose any acts of default attendant upon the municipal bond in question.

Pursuant to MSRB rule A-16, section (2), the MSRB shall refund to Claimants their \$100 arbitration deposit.

OTHER ISSUES

Respondent Norris & Hirshberg, Inc. requested, pursuant to MSRB rule G-35, section 34(f), that the undersigned hold a hearing in this controversy. Claimants opposed Respondent's request. The undersigned denied Respondent's request and this matter was determined solely upon the pleadings and evidence submitted.


Andrew J. Ekonomou

Dated: April 3, 1990

STATE OF GEORGIA
COUNTY OF FULTON

ss.:

On this 3rd day of April, 1990, before me personally appeared Andrew J. Ekonomou 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