

**MSRB**  
MUNICIPAL SECURITIES RULEMAKING BOARD

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H.S.R.B.

In the Matter of the Arbitration Between

Claimants,

v.

BOETTCHER & COMPANY, INC. and GREGORY W.  
KENNEDY,

Respondents.

AWARD  
MS 89-84

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

**CASE SUMMARY**

Claimants alleged that Respondent Kennedy told them, prior to thier purchase of certain municipal securities from Respondents, that they would receive \$3,536.25 every six months in interest. Claimants further alleged that they received only \$3,075.00 in interest.

Respondents argued that Respondent Kennedy's calculation of interest was an estimate without contractual effect, that it was performed a week after Claimants purchased the securities and that there is no way Claimants could have relied on the calculation in making their purchase. Respondents further argued that Claimants failed to mitigate damages and that Claimants refused to accept Respondents' offer to rescind the transaction and to permit Claimants to retain interest they recieved on the securities.

**RELIEF REQUESTED**

Claimants requested that Respondents be ordered to pay to them \$5,535.00.

Respondents requested that Claimants' claim be dismissed.

**AWARD**

On February 15, 1990, in Denver, Colorado, the undersigned arbitrator heard the controversy between the parties set forth in submissions to the arbitrator signed by Claimants on August 5, 1989 (filed with the MSRB on September 28, 1989); and by Respondents on October 20, 1989. The undersigned, having considered the pleadings, the testimony and the evidence presented at the hearing, has determined, in full and final resolution of the issues submitted for determination, that Claimants shall have the option either:

1. to tender the securities in controversy to Respondents, no later than 30 days from receipt of this award, upon which Respondents shall refund Claimants' purchase price of \$71,750.42, plus accrued interest to the date Claimants tender the securities to Respondents, plus \$500; or
2. to keep the securities and their claim shall thus be dismissed.

Pursuant to MSRB rule A-16, section (2), the MSRB shall refund to Claimants their \$200 arbitration deposit and \$200 shall be assessed against Respondents as forum fees.

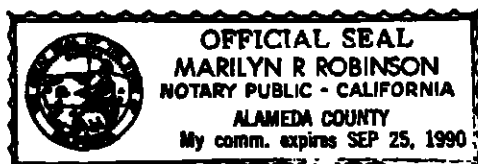
  
Robert Brunsell

Dated: February 26, 1990

STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

ss.:

On this 26th day of February, 1990, before me personally appeared Robert Brunsell 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.



  
Marilyn R. Robinson