

MSRB
MUNICIPAL SECURITIES RULEMAKING BOARD

In the Matter of the Arbitration Between

Claimants,

v.

BOETTCHER & COMPANY, INC. and
LAURENCE G. ALPERT,

Respondents.

AWARD
MS 89-90

The UNDERSIGNED, pursuant to MSRB Rule G-35, Section 31, hereby state as follows:

CASE SUMMARY

Claimants allege that Respondent Laurence G. Alpert ("Alpert"), acting within the scope of his employment with Respondent Boettcher & Company, Inc. ("Boettcher"), made misrepresentations of material facts to one or the other Claimant in connection with Claimants' purchase of Arapahoe County Sports Facility Revenue Bonds (Arapahoe Park Project), 1983 Series A ("the A bonds") and Series B ("the B bonds"). They state that, in 1984, Claimant (" ") purchased \$70,000 of the A bonds and that Claimant (" ")

's daughter, purchased \$10,000 of the B bonds. Specifically, they allege that Alpert said the bonds were a suitable investment, that they were secured, safe and/or fully protected investments, that they were high quality low risk investments designed to preserve the principle and provide a reasonable return, that enough money was escrowed to protect payment of interest for at least four years and that the principle was completely protected, and that Claimants would receive a prospectus describing the bonds which Claimants allege they did not receive.

Claimants state that the bond issuers filed for protection from creditors under Chapter 11 of the Bankruptcy Code on May 17, 1985. Claimants allege that Respondents actions, misrepresentations, negligence, and omissions constituted a plan to defraud Claimants and were a breach of fiduciary duty. Claimants argue that Respondents violated Section 10(b) of the 1934 Act and Rule 10(b)-5 thereunder, sections 15(c)(1) and 20(a) of the 1934 Act, sections 12(2) and 17 of the 1933 Act, and

Colorado state statutes including, but not limited to, C.R.S. Section 11-51-123, Section 11-51-125, and State Common Law Fraud.

Respondents argue that, when [redacted] opened his account with Boettcher in May 1983, he executed a new account form wherein he represented to Boettcher that his primary investment objective was growth with greater risk. They allege that [redacted] paid for and made the investments for [redacted]. They further allege that [redacted] established a clear practice of purchasing a wide variety of investments prior to purchasing the bonds in controversy. Respondents argue that \$10,000 of the B bonds were purchased for [redacted]'s account on December 15, 1983 by [redacted] and that Claimants were provided with the official statement for the bonds which disclosed all salient features about the bonds, including the risks and that it was non-rated. They argue that [redacted] purchased \$70,000 of the A bonds on February 8, 1984 on the secondary market and that the official statement had been provided in connection with [redacted]'s purchase.

Respondents allege that Alpert's standard practice is to read official statements for new bond issues prior to speaking to his clients about them and to discuss only information contained in such official statements. They argue that the bonds in controversy were consistent with the stated investment objectives and economic circumstances of Claimants. Respondents deny that they violated 10(b) of the 1934 Act and rule 10(b)-5 thereunder, sections 12(2) and 20(a) of the 1933 Act, and any provisions of the Colorado Securities Act including, but not limited to, C.R.S. sections 11-51-123 and 11-51-125, and argue that claims brought under these federal and state laws are barred by applicable statute of limitations. Respondents also deny that they violated 15(c)(1) of the 1934 Act and Section 17(a) of the 1933 Act, and argue that there is no right of private action under these provisions. They deny that they were negligent or that they intentionally misrepresented facts and argue that Claimants have not alleged any facts which suggest or prove a fiduciary relationship between them and Respondents, also arguing that these allegations of Claimants are barred by applicable statute of limitations.

RELIEF REQUESTED

Claimants request return or reimbursement of \$70,000.00, plus interest from May 17, 1985 at 9.75% per annum (the interest rate of bonds sold to purchase the A bonds) or at 11.5% (the A bond interest rate) to [redacted]; and \$10,000, plus interest from May 17, 1985 at 10.8% per annum (the interest rate of the money market from which [redacted] withdrew part of the funds used to purchase the B bonds) or at 12% (the B bond interest rate) to [redacted].

Rosenblatt. They also request out of pocket damages including legal fees, filing costs and other reasonable costs.

Respondents request that Claimants' claims be dismissed and that forum fees be assessed against Claimants.

AWARD

On May 18, 1990, in Denver Colorado, the undersigned arbitrators heard the controversy between the parties set forth in submissions to the arbitrators signed by Yoelin on September 25, 1989 and Rosenblatt on September 29, 1989 (and filed with the MSRB on October 26, 1989); by Boettcher, on December 13, 1989 and by Alpert on January 4, 1990. The arbitrators, having considered the pleadings, the testimony and the evidence presented at the hearing, have determined in full and final resolution of the issues submitted for determination that:

Claimants' claims against Alpert are dismissed in their entirety;

Yoelin's claims against Boettcher are dismissed in their entirety;

Boettcher shall pay to Rosenblatt \$10,000, plus 8% interest thereon from May 17, 1985 to the date of payment to Rosenblatt. The amount of coupon interest Rosenblatt received on the B bonds shall be deducted from such interest paid to her; and

all other claims of Claimants are dismissed, including those for costs and attorneys fees.

And, pursuant to rule A-16, section 2, the MSRB shall retain Claimants' \$500 arbitration deposit.


Neill Hannon, Esq. CHAIR


O. Delton Bennett


Stephen E. Bauer

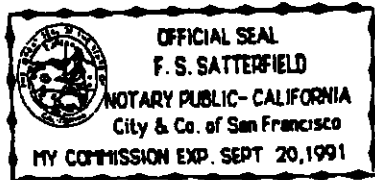
RECEIVED

Dated: JUN 11 1990

STATE OF
COUNTY OF

SS.:

On this 26th day of May, 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.



F. S. Satterfield

STATE OF Washington
COUNTY OF King

SS.:

On this 31st day of May, 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.

Martha A. Jainem

STATE OF TEXAS
COUNTY OF ARLANS

SS.:

On this 5th day of JUNE, 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.

Tom J. May