

MSRB

MUNICIPAL SECURITIES RULEMAKING BOARD

In the Matter of the Arbitration Between

v.

Claimants,

McLAUGHLIN, PIVEL, VOGEL SECURITIES, INC. and
DAVID C. JOHNS,

Respondents.

AWARD
MS 90-9
SC0-005

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

CASE SUMMARY

Claimants allege that Respondents, upon Claimants' request due to tax considerations, recommended that they sell \$20,000 Intermountain Power Agency Utah Power Supply ("IPA") municipal securities and purchase \$20,000 Massachusetts Municipal Wholesale Electric Corp. ("MMWEC") municipal securities. They argue that they received less than the market price for the IPA securities and paid more than the market price for the MMWEC securities, as quoted by other pricing services. Claimants further allege that they were not informed by Respondents prior to the time of purchase of MMWEC's involvement with the Seabrook Facility, which involvement allegedly resulted in Moody's suspending MMWEC securities' rating because of their debt service obligation in the facility. Claimants also allege improper delays in their account with Respondents regarding delivery of certificates and interest payments. They state that they later sold the MMWEC securities at a loss.

Respondent McLaughlin, Piven, Vogel, Inc. ("MPV") states that, because of tax considerations, Claimants asked MPV in mid-December 1987 to liquidate \$20,000 IPA securities and find a trade of comparable quality and price before the end of that year. MPV argues that Claimants were aware that a market loss would be incurred on the sale of the IPA securities. MPV alleges that Respondent David C. Johns ("Johns") explained in detail the involvement of MMWEC with the Seabrook Facility and the fact MMWEC had been upgraded to a BAA/BBB rating prior to receiving

Claimants' authorization to execute the transaction. MPV questions the pricing service relied upon by Claimants to discover the market price of the IPA and MMWEC securities and argues that the transactions occurred approximately one month prior to the date Claimants allege that they checked such pricing service. MPV argues that Claimants' investments were held in a "Hold Proceeds" type account for safekeeping with MPV, with credit balances generated from interest payments on the securities also held in the account and earning interest until such money was requested by Claimants. MPV also questions why Claimants waited almost ninth months from the time they allegedly learned about MMWEC's obligation to Seabrook to sell the MMWEC securities.

Johns states that he left the employ of MPV on January 6, 1989. He argues that Claimants were aware that the price of the IPA securities dropped over the year that they held them. Johns alleges that he informed Claimants about the obligations of MMWEC to the Seabrook Facility at the time of sale of the MMWEC securities to them. Johns also questions the pricing service relied upon by Claimants and the timeliness of that information. Johns argues that Claimants' account was a "hold account" and that, to the best of his knowledge, Claimants were aware of this and that their requests for delivery were handled with little or no delay.

RELIEF REQUESTED

Claimants request payment of \$2,125.00 as damages, \$74.52 and \$65.45 as late interest proceeds, \$100 for the arbitration filing fee, unspecified legal fees, and \$470.61 as loss of additional investment return on the \$2,125.00 damages for a total claim of \$3,306.19. In addition, Claimants request \$6,612.38 in punitive damages for "displeasure and additional efforts necessary to seek restitution caused by the arrogance and disregard" of MPV.

MPV questions the reliability of Claimants' sources and the accuracy of their calculations regarding the damages requested. In addition, MPV questions whether punitive damages could be pursued through arbitration. Johns argues that, during his four years with MPV, he believed that "they handled customers both courteously and consenciously [sic] with only their best interest in mind."

AWARD

The undersigned arbitrator reviewed the controversy between the parties set forth in submissions to the arbitrator

signed by Claimants on December 27, 1989 (filed with the MSRB on January 26, 1990); by MPV on February 27, 1990; and by Johns on February 28, 1990.

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

MPV shall pay to Claimants \$2.57 plus \$66.39 for a total payment of \$68.96 as late interest proceeds;

All Claimants' other claims against MPV are hereby dismissed in their entirety; and

Claimants' claims against Johns are hereby dismissed in their entirety.

Pursuant to MSRB rule A-16, section (2), the MSRB shall refund to Claimants \$50 of their \$50 arbitration deposit and \$50 shall be assessed against MPV.

Barry Alan Pupkin
Barry Alan Pupkin

Dated: 6/15/90

~~STATE OF~~ DISTRICT OF
~~COUNTY OF~~ COLUMBIA

ss.:

On this 15th day of June, 1990, before me personally appeared Barry Alan Pupkin 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.

Christina M. Hynoch

My Commission Expires November 14, 1992