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MAY 18 1991  
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In the Matter of the Arbitration between :  
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Claimant, : AWARD  
:  
v. :  
:  
ROBERT PEELE and MERRILL LYNCH, PIERCE, : MS 90-46  
FENNER & SMITH, INC., :  
Respondents. :  
:

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

#### CASE SUMMARY

Claimant, a national bank located in the State of Illinois, alleges that Robert Peele ("Respondent Peele"), a registered representative of Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent Merrill Lynch"), recommended and Claimant purchased \$250,000 face amount of each of the following municipal securities as of the settlement dates indicated: Louisiana Hsg. Fin. Agy., 8.610%, due 8/1/96, on 3/28/88; Southeast Texas Hsg. Fin. Corp., 8.60%, due 9/1/96, on 3/27/89; Louisiana State Agri. Fin. Auth., 8.25%, due 10/1/96, on 3/27/89; and, El Paso Texas Hsg. Fin. Corp., 8.880%, due 10/15/96, on 4/21/89 (collectively "the Bonds"). In connection with the offer and sale of the Bonds, Claimant alleges that Respondent Merrill Lynch, acting through its agent, Respondent Peele, made false and misleading statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, namely: (A) that the Bonds were standard, taxable municipal bonds issued by the various municipal housing or agricultural authorities indicated; (B) that the Bonds were insured by either the Municipal Bond Investors Assurance ("MBIA") or the Financial Guaranty Insurance Company ("FGIC"); and (C) that, rather than being insured taxable municipal bonds issued for the purposes indicated, the Bonds in fact were guaranteed investment contracts ("GICs") issued by the Executive Life Insurance Company ("Executive Life"). In addition, Claimant alleges that Respondent Merrill Lynch's confirmations on the Bonds make it appear that these were typical housing finance agency type bonds and contain no reference to Executive Life or that they are GICs. Claimant contends that it reasonably relied on Respondents Peele and Merrill Lynch's representations, and that, when Respondent Merrill Lynch did not respond in a

timely fashion to Claimant's notice of election to rescind the purchase of the Bonds, Claimant, in an effort to mitigate its damages and avoid further deterioration in the value of the Bonds, sold the Bonds at substantial losses.

With respect to the foregoing, Claimant asserts claims under Section 12 of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder; Section 12 of the Illinois Securities Law of 1953, as amended ("Illinois Act"); Rules G-17 and G-19 of the Municipal Securities Rulemaking Board ("MSRB"); Section 20 of the Exchange Act; and, the doctrine of Respondeat Superior.

Respondents argue, among other things, that in March, 1988, Claimant's investment officer indicated to Respondent Peele that he had an interest in taxable municipal bonds, that he had reviewed several taxable municipal offerings, and that he had purchased some taxable municipals from another brokerage firm. Respondents also argue that Claimant's investment officer stated that Claimant would buy some taxable municipals from Respondent Merrill Lynch if the securities fit Claimant's investment parameters. Respondents maintain that Respondent Peele indicated to Claimant's investment officer that he had never sold taxable municipal securities before but that he would find out what Respondent Merrill Lynch had available.

Respondents contend that Respondent Peele did not recommend the Bonds but, rather, located them in the market and offered them to Claimant to satisfy Claimant's request. Respondents maintain that the Bonds were rated "AAA" by Standard & Poor's and fit well within Claimant's investment parameters. Respondents also maintain that at no time did Respondent Peele state that any of the Bonds were insured by either MBIA or FGIC, nor assert that the Bonds were in all respects similar to tax exempt bonds issued by various governmental housing and agriculture financial authorities.

Both Claimant and Respondents agree that the Bonds declined substantially in market value as a result of downgrading by Standard & Poor's in January 1990 and uncertainty concerning the ability of Executive Life to fulfill its obligations under the GICs. Respondents contend that Claimant's investment portfolio was reviewed on a monthly basis by Claimant's funds management committee and, if at any time, Claimant, Claimant's investment officer, or Claimant's funds management committee had any question about the nature of the securities which they sought and then purchased, they were free to obtain additional information, either from Respondent Merrill Lynch, or through their own efforts as a financial institution engaged in, among other things, the analysis of credit risks.

Respondents assert that Claimant's claims are barred by the doctrine of laches and estoppel, and by the statute of limitations. Respondents also assert that Claimant is barred from any

recovery because it authorized, directed, consented to, acquiesced and/or ratified all transactions in question. Respondents further assert that, at all times relevant, Respondents acted reasonably and in good faith with respect to the servicing of Claimant's account. In addition, Respondents contend that the statement of claim fails to assert a claim upon which relief may be granted.

#### RELIEF REQUESTED

Claimant requests an award against Respondents Peele and Merrill Lynch, jointly and severally, in the amount of damages Claimant alleges to have suffered, or \$355,334, plus interest thereon, less any income received, its costs and such other and further relief as the arbitrators will allow. Claimant also seeks to recover its attorney's fees under Section 13 of the Illinois Act.

Respondents request that the claim be denied in its entirety with costs assessed against Claimant.

#### FINDINGS AND AWARD

On March 12-13, 1991, in Chicago, Illinois, the undersigned arbitrators heard the controversy between the parties set forth in submissions to the arbitrators signed by Claimant on June 15, 1990 (filed with the MSRB on July 19, 1990); by Respondent Peele on October 23, 1990; and, by Respondent Merrill Lynch on October 24, 1990. The arbitration panel, 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, as follows:

#### FINDINGS

1. In connection with the offering and sale of the Bonds, Respondent Merrill Lynch through the confirmations of the sales and acting through its agent Respondent Peele made false and misleading statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, namely (A) stating that the Bonds were insured when they were not insured and (B) omitting to state that the proceeds of the Bonds were invested in GICs issued by Executive Life.

2. Claimant reasonably relied on Respondents Peele and Merrill Lynch's representations in connection with the purchase of the Bonds.

3. Such actions by Respondents violate (A) Section 12 of the Securities Act of 1933, (B) Rule 10b-5 promulgated under the Exchange Act, (C) the Illinois Act, and (D) Rule G-17 of the

MSRB.

4. Respondent Merrill Lynch is directly responsible for these violations through its issuance of the confirmations and also is responsible for the actions of Respondent Peele under the doctrine of Respondeat Superior and under Section 20 of the Exchange Act.

5. Notwithstanding the above-described violations by Respondents at the time of the offering and sale of the Bonds, Claimant was later put on notice by a representative of another broker/dealer, by facsimile dated November 22, 1989 (Claimant's Exhibit 5), that two of the Bonds were not insured by MBIA or FGIC, but instead were "insured by Executive Life". Those two Bonds were the El Paso Texas Hsg. Fin. Corp., 8.880%, due 10/15/96, and the Southeast Texas Hsg. Fin. Corp., 8.60%, due 9/1/96 (collectively the "Two Texas Bonds"). As indicated on Claimant's Exhibit 5, quotes were obtained by Claimant indicating that the Two Texas Bonds could have been sold by the Claimant at a profit on that date. Rather than inquiring further with Merrill Lynch or others or making any further investigation about the nature of the Two Texas Bonds and rather than selling the Two Texas Bonds, Claimant chose not to inquire further and chose not to sell the Two Texas Bonds and thereby took upon itself all risk with respect to the Two Texas Bonds. Claimant by its actions and inactions in November 1989 and thereafter in effect ratified and confirmed with full knowledge its purchase of the Two Texas Bonds.

6. The actual or attributed knowledge of Claimant with respect to the Two Texas Bonds does not extend to the other two Bonds, being the Louisiana Hsg. Fin. Agy., 8.610%, due 8/1/96, and the Louisiana State Agri. Fin. Auth., 8.25%, due 10/1/96 (collectively the "Two Louisiana Bonds").

7. Upon Respondent Merrill Lynch's failure to agree to Claimant's notice of election to rescind the purchase of the Bonds, Claimant in an effort to mitigate its damages and avoid further deterioration in the value of the Bonds, sold the Two Louisiana Bonds at substantial losses.

#### AWARD

ACCORDINGLY, award is made as follows:

1. Respondent Merrill Lynch and Respondent Peele are jointly and severally liable to Claimant for its claimed losses of \$101,263.00 for the Louisiana Hsg. Fin. Agy., 8.610%, due 8/1/96, and of \$75,719.00 for the Louisiana State Agri. Fin. Auth., 8.25%, due 10/1/96, for a total of \$176,982.00.

2. Respondent Merrill Lynch and Respondent Peele are jointly and severally liable to Claimant for interest on the aforementioned sum at the rate of 7.25% per annum (being the

average six-month Treasury yield for the last twelve months), based on a 360-day year, from May 3, 1990, the date of settlement of Claimant's sale of the Louisiana State Agri. Fin. Auth., 8.25%, due 10/1/96, and from May 11, 1990, the date of settlement of Claimant's sale of the Louisiana Hsg. Fin. Agy., 8.610%, due 8/1/96, until the date of payment of this award.

3. Claimants are not entitled to any recovery on the Two Texas Bonds.

4. Respondent Merrill Lynch and Respondent Peele are jointly and severally liable to Claimant for its reasonable attorney's fees, in the amount of \$17,921.25, and costs, in the amount of \$676.85, for a total of \$18,598.10, pursuant to Section 13 of the Illinois Act.

5. The filing fee previously paid by Claimant to the MSRB shall be refunded to Claimant by the MSRB and \$1,500.00 in forum fees for the two days of hearing shall be paid by Respondents to the MSRB, pursuant to MSRB rule A-16(2).

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Public Arbitrator

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Public Arbitrator

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Industry Arbitrator

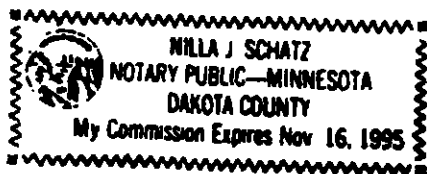
Dated:

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MAY 16 1991  
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STATE OF *Minnesota*  
COUNTY OF *Hennepin*

ss.:

On this *30<sup>th</sup>* day of *April*, 19*91*, 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.



*Nilla J. Schatz*

STATE OF  
COUNTY OF

ss.:

On this *6<sup>th</sup>* day of *May*, 19*91*, 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.

*Edith Morales*

STATE OF *Texas*  
COUNTY OF *Harris*

ss.: *462-23-2059*


On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, 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.

average six-month Treasury yield for the last twelve months), based on a 360-day year, from May 3, 1990, the date of settlement of Claimant's sale of the Louisiana State Agri. Fin. Auth., 8.25%, due 10/1/96, and from May 11, 1990, the date of settlement of Claimant's sale of the Louisiana Hsg. Fin. Agy., 8.610%, due 8/1/96, until the date of payment of this award.

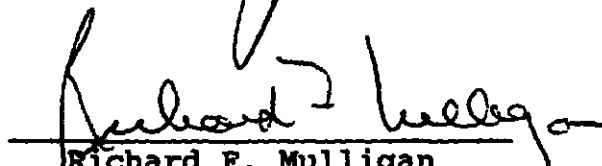
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Mark R. Johnson

  
Stephen L. Tabb

  
Richard F. Mulligan

Dated:

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