

12-1-63

## AWARD

**VAN KAMPEN MERRITT INC.**  
**and JAMES M. KOHLMEYER,**

**MS 90-68**

**Respondents.** :

## CASE SUMMARY

Respondents deny Claimant's allegations of wrongdoing. Respondents argue, among other things, that Respondents had no duty imposed by law or regulation to provide an official statement to Claimant prior to the dates Claimant purchased the bonds at issue in the secondary market. Respondents also argue that Respondents had no knowledge or reason to know of any material facts which would negatively impact the value of the bonds prior

to the dates the bonds were purchased by Claimant. In addition, Respondents maintain that Respondents disclosed to Claimant all material facts concerning the bonds which were available to the market prior to Claimant's decisions to purchase the bonds, which included the disclosure that the bonds had a guaranteed investment contract with Executive Life. Respondents also contend that, in recommending the bonds to Claimant, Respondents reasonably relied on the AAA rating given by Standard & Poor's Corporation, and that Respondents acted in accordance with Claimant's expressed objectives and directions.

#### RELIEF REQUESTED

Claimant seeks to recover the difference between Claimant's purchase price and the current market value of the bonds, or actual losses of approximately \$470,178, plus all interest and commissions, Claimant's costs including attorney's fees of approximately \$20,000, and punitive damages. In the alternative, and in light of statements made by Respondents concerning the future value of the bonds, Claimant requests that the arbitrators order Respondents to rescind the transactions or to reimburse Claimant for its losses in exchange for the bonds.

Respondents request that the Statement of Claim be denied in its entirety and that Respondents be awarded their costs, including attorney's fees.

#### AWARD


On May 21-22, 1991, in Chicago, Illinois, the undersigned arbitrators heard the controversy between the parties set forth in submissions to the arbitrators signed by Claimant on September 20, 1990 (filed with the MSRB on November 26, 1990) and by Respondents on January 9, 1991. 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:

1. Claimant may retain the bonds at issue.
2. Respondents shall be jointly and severally liable and shall pay to Claimant damages of \$31,200 on the Southeast bonds.
3. Claimant's request for relief on the El Paso bonds, and for interest, commissions and punitive damages, is denied.
4. Each party shall bear its own costs, including attorney's fees.

5. The MSRB shall retain \$750 of amounts previously deposited by Claimant as forum fees, and Respondents shall pay to the MSRB \$750 as forum fees, pursuant to section 2 of MSRB rule A-16.

  
Ewald L. Moerke, Jr.

  
James F. Tucker

  
Paul A. Lynch

Dated: 6/8/91

STATE OF *WISCONSIN*  
COUNTY OF *Milwaukee*

SS.:

On this *28<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.

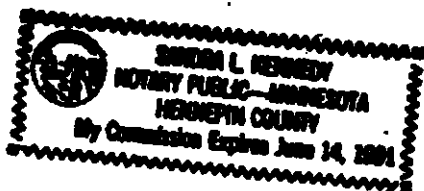


*Deborah Gil*  
exp. 11-10-91

STATE OF *MINNESOTA*  
COUNTY OF *Hennepin*

SS.:

On this *31<sup>st</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.



*Sandra L. Kennedy*

STATE OF *Virginia*  
COUNTY OF *Henrico*

SS.:

On this *8* 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.

*My commission expires July 4, 1992*  
*James A. Parker, Jr.*