

**MSRB**  
MUNICIPAL SECURITIES RULEMAKING BOARD

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E.C.

In the Matter of the Arbitration between	:	
ART MOSHER A/K/A ARTHUR J. MOSHER,	:	AWARD
Claimant,	:	
v.	:	
DAIN BOSWORTH, INC.,	:	MS 91-1
Respondent.	:	SC1-001

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

**CASE SUMMARY/RELIEF REQUESTED**

Claimant seeks to recover \$5275 from Respondent for alleged fraudulent sales practices in connection with the sale to Claimant on November 25, 1986 of \$5,000 face amount of Colorado Springs - Stetson Hills Public Building Authority Landowner Assessment Lien Bonds, Series 1986A ("the pending claim").

Respondent denies Claimant's allegations. Respondent also argues, by way of a request for dismissal, that on June 15, 1989 Claimant filed a claim with the MSRB generally alleging that he had been defrauded by Respondent in connection with his purchase of \$10,000 face amount of certain Farmers Marketing Association municipal bonds ("the first claim"). Respondent argues that on April 12, 1990 Respondent and Claimant settled the first claim by executing a settlement agreement and mutual release ("settlement agreement") whereby Claimant agreed to release Respondent from any and all claims, known or unknown, arising out of circumstances occurring prior to the effective date of the settlement agreement. Respondent also argues that the trustee for the Stetson Hills bonds at issue in the pending claim notified bondholders that said bonds were in default on March 15, 1989, approximately one year prior to Claimant's execution of the settlement agreement. Respondent contends that the broad release language and terms of the settlement agreement in the first claim apply to and preclude the pending claim.

Respondent contends that Claimant has breached the terms of the settlement agreement by filing the pending claim. Respondent requests that the pending claim be dismissed with prejudice and that Respondent be awarded its costs and attorneys' fees. Respondent also requests, by way of a counterclaim alleging malicious breach of contract, direct and consequential damages to reputation, reasonable attorneys' fees, and punitive damages.

Claimant argues that his interpretation of the settlement agreement is that it is limited to claims relating to the Farmers Marketing Association bonds, and that he never would have agreed to release Respondent from other claims.

### ORDER FOR DISMISSAL

The undersigned arbitrator reviewed the controversy between the parties set forth in submissions to the arbitrator signed by Claimant on December 28, 1990 (filed with the MSRB on January 2, 1991) and by Respondent on March 7, 1991. On September 10, 1991, Respondent requested a telephonic hearing on its request for dismissal prior to the scheduled September 17, 1991 hearing in Columbus, Ohio. The undersigned granted said request and a telephonic hearing was held on September 13, 1991. The undersigned, having considered the pleadings as well as the arguments offered in said telephonic hearing, has determined, in full and final resolution of the issues submitted for determination, that:

1. Claimant's claim shall be dismissed with prejudice.
2. Respondent's counterclaim shall be dismissed with prejudice.
3. Each of the parties shall bear its own costs, including attorneys' fees.
4. Claimant's \$200 arbitration deposit shall be retained by the MSRB as costs of this proceeding.

\_\_\_\_\_  
Public Arbitrator

Dated: September 27, 1991

STATE OF NEW YORK  
COUNTY OF NEW YORK

ss.:

On this 27th day of September, 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.

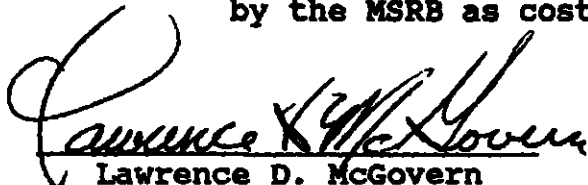
Linda Schuch

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Lawrence D. McGovern

Dated: September 27, 1991

STATE OF NEW YORK  
COUNTY OF NEW YORK

ss.:

On this 27th day of September, 19 91, before me personally appeared Lawrence D. McGovern 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.

