

MSRB
MUNICIPAL SECURITIES RULEMAKING BOARD

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In the Matter of the Arbitration between :
:
RALPH M. OBLER and JUNE M. OBLER, : AWARD
Claimants, :
:
V. :
: MS 91-6
A.F. GREEN & CO., INC. and GENE LANTON, : SC1-004
Respondents. :
:

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

CASE SUMMARY

In their Statement of Claim, Claimants allege that in February, 1988, they purchased from Respondent A.F. Green & Co., Inc. ("Respondent A.F. Green"), through its representative Respondent Gene Lanton ("Respondent Lanton"), \$200,000 face amount of City of Baldwin Park, California, 1984 Single Family Mortgage Revenue Bonds, 0%, due 12/1/17 ("the Bonds"), at a price of \$8.255, for a total of \$16,510. Claimants allege that the Bonds were represented as non-callable and AAA/AAA rated. Claimants allege that on 12/1/89 \$160,000 of the Bonds were called for redemption at \$249.36 per \$5,000 bond, for a total of \$7,979.52. Claimants allege that their original cost was \$412.75 per \$5,000 bond (50 x \$8.255), and that the call resulted in a loss to them of \$163.39 per \$5,000 bond, for a total loss of \$5,228.48 (32 x \$163.39). Claimants allege that they learned subsequently that single family mortgage revenue bonds may be called on any interest accrual date, contrary to what was represented. Claimants allege that the remainder of the Bonds (\$40,000) will undoubtedly be called for redemption.

In a supplement to their Claim, Claimants allege that an additional \$20,000 of the Bonds were called on 6/1/91 at \$292.81 per \$5,000 bond, resulting in a loss to them of \$119.94 per \$5,000 bond, for a total of \$496.76.

Respondent Lanton argues, among other things, that Claimants had been purchasing municipal bonds from Respondent A.F. Green and from other companies for many years. Respondent Lanton argues that Claimants stated that they were interested in purchasing a AAA, tax-free, California bond that possessed qualities of growth. Respondent Lanton argues that he scanned Respondent A.F. Green's inventory list and found an AMBAC insured bond, AAA rated by Moody's and Standard & Poor's, that met Claimants' requirements. Respondent Lanton argues that he gave

Claimants the complete description of the bond that was stated on the firm's inventory list. Respondent Lanton argues that the inventory list did not state that the bond was "non-callable." Respondent Lanton argues that he never represented the Bonds to Claimants as being "non-callable," and that Claimants never mentioned non-callability as part of the criteria for the bonds that they wanted. Respondent Lanton argues that his order ticket for the trade does not describe the Bonds as being "non-callable."

Respondent Lanton argues that he was unaware that the Bonds were callable. Respondent Lanton argues that he had not seen the bond certificate and that, as a matter of policy, Respondent A.F. Green never provided its salesman with copies of the bonds they sold. Respondent Lanton argues that the firm's inventory list was his only source of information, that he relied on the information on the inventory list to disclose the proper facts of an investment to any customer, and that he had no reason to believe that the information given to him by the firm was false or inaccurate.

Respondent Lanton argues that he first became aware of extraordinary call features on housing bonds on September 30, 1988, during a meeting of the sales force of Respondent A.F. Green. Respondent Lanton argues that Claimants had the bond certificate in their possession in April, 1988. Respondent Lanton argues that the extraordinary interest date redemption feature had to appear on the bond or it could not be redeemed by the issuer. Respondent Lanton argues that Claimants could have requested additional information from him or the firm regarding callability, but they never did.

Respondent Lanton argues that Claimants' losses are due to the excessive mark-up that they were charged by Respondent A.F. Green. Respondent Lanton argues that he was a salesman for Respondent A.F. Green and had no authority with respect to what bonds were purchased for sale to customers or the prices charged. Respondent Lanton argues that in November, 1990, the NASD fined the firm's principals, Allen Green and Robert Brand, for double ticketing, excessive mark-ups, and for failing to disclose extraordinary call features to customers. Respondent Lanton argues that they, not he, should be held accountable for Claimants' losses.

Respondent A.F. Green did not file a Statement of Answer in this matter.

RELIEF REQUESTED

In their Statement of Claim, Claimants request an award in the amount of \$5,228.48 for their "completed loss," plus \$1,307.12, for their maximum potential loss on future redemptions of the remaining \$40,000 bonds (\$163.39 per \$5,000 bond x 8); the

exact amount, Claimants allege, can only be determined when the call occurs, and will decrease the "further out in time the call comes." Claimants also request interest on these amounts from 12/1/89 at 9% per annum, and the return of their \$200 filing fee. In the supplement to their Claim, Claimants request that the \$479.76 be added to the "completed loss" in their original Claim, and they state that a further loss will be incurred when the remaining \$20,000 bonds are called.

FINDINGS AND AWARD

The undersigned arbitrator reviewed the controversy between the parties set forth in submissions to the arbitrator signed by Claimants on December 15, 1990 (filed with the MSRB on January 28, 1991) and by Respondent Lanton on April 8, 1991. Respondent A.F. Green did not file an executed submission agreement. The undersigned, having considered the matter solely upon the pleadings and evidence submitted by the parties, pursuant to section 34 of MSRB rule G-35, has determined, in full and final resolution of the issues submitted for determination, as follows:

Claimants purchased \$200,000 in zero coupon municipal bonds for a total price of \$16,510 from Respondent A.F. Green through its representative, Respondent Lanton. The confirmation slip, which indicates they paid for the securities on February 22, 1988, describes the Bonds as "non-callable." The brokerage firm's inventory list, which Respondent Lanton referred to in selling the securities to the Claimants, did not show them to be subject to any call feature. The order ticket which Respondent Lanton completed on February 4, 1988, did not show the Bonds to be subject to any call feature.

The physical bond certificate was delivered to the Claimants in April, 1988. The face of the bond reflects that it is subject to early redemption by the issuer, and sets forth the principal and interest that would be paid to the holder on each potential call date if the bond was redeemed prior to maturity. Claimants had actual notice of the early redemption features of the Bonds from in or about April, 1988 to December 1, 1989 when \$160,000 of the Bonds were redeemed subjecting Claimants to a loss of \$5,228.48.

On June 1, 1991, an additional \$20,000 of the Bonds were redeemed for which Claimants sustained a loss of \$479.76. Respondent A.F. Green is no longer in business, but was in operation in April, 1988 when Claimants received the bond certificate.

Although the confirmation slip falsely represented the Bonds to be non-callable and while Claimants paid for the Bonds in the justifiable belief that they were non-callable, the bond certificate, which they received in or about April, 1988, when the Respondent brokerage company was in business, clearly showed the Bonds to be subject to early redemption. Claimants could have taken steps to rescind their purchase on the basis of a material misrepresentation as to the nature of the Bonds in April, 1988. Instead, with actual knowledge of the bond's call feature, they did not act to rescind their purchase. Even after \$160,000 of the Bonds were redeemed in December, 1989, well over one and a half years after they had actual knowledge of the call feature, Claimants waited close to a year to act with respect to their purchase, initiating the present action in the latter part of 1990.

Although the call feature of the Bonds was misrepresented to Claimants on the confirmation slip, their receipt of the bond certificate provided them with actual knowledge of the fact that there was a call feature. Claimants did not act to protect themselves and mitigate their damages in a timely fashion. Although the victims of misrepresentation and deceit at least on the part of Respondent A.F. Green, Claimants' failure to act is the proximate cause of their losses. Accordingly, Claimants' claim is dismissed. The MSRB shall retain Claimants' \$200 filing fee.


Andrew J. Ekonomou

Dated: November 1, 1991

STATE OF *Georgia* ss.:
COUNTY OF *Clayton*

On this *1st* day of *November*, 19*91*, before me personally appeared Andrew J. Ekonomou 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.

