

MSRB
MUNICIPAL SECURITIES RULEMAKING BOARD

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MSRB

In the Matter of the Arbitration between

Claimants,

v.

POWELL & SATTERFIELD, INC. AND MICHAEL
TOGNETTI

Respondents.

AWARD

MS91-8
SC1-006

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

CASE SUMMARY

Claimants allege that, on August 14, 1990, Respondent Michael Tognetti ("Respondent Tognetti"), a representative of Respondent Powell & Satterfield, Inc., solicited Claimants to purchase \$15,000 Jefferson County, Kentucky Nursing Home Refunding Revenue Bonds (Filson Care Home Project) Series 1986A, 10%, due 12/01/16, dated 12/01/86 (the "Bonds"). Claimants allege that they previously had sold bonds in a defaulted nursing home facility through Respondent Tognetti and had informed him that they wanted the proceeds invested in bonds that would generate income. Claimants allege that Respondent Tognetti was aware that Claimants currently owned some bonds of the aforementioned Jefferson County issue and he offered Claimants the Bonds at a price of 67. Claimants maintain that they had received the June 1, 1990 coupon on the Jefferson County bonds that they presently owned and they had no reason to believe that there was any problem with the facility. Claimants allege that when they asked Respondent Tognetti why the Bonds were selling at 67, he said that Medicaid payments were slow and that the facility had always been late with their payments into the debt service reserve. Claimants also allege that Respondent Tognetti stated that a letter from the project administrator stated that the facility was virtually full. Claimants maintain that they purchased the Bonds "based on this reassuring information."

Claimants allege that in December, 1990, they received a notice from the Trustee for the Bonds, dated November 12, 1990, which referred to an August 2, 1990 notice and stated that the borrower had not made monthly loan repayments since December, 1989. Claimants allege that they contacted Respondent Tognetti

to find out what was going on. Claimants also allege that they contacted the facility and were able to obtain the August 2, 1990 notice and a June 29, 1990 notice. Claimants contend that information contained in these notices regarding events of default was not disclosed to Claimants by Respondent Tognetti at the time of sale. Claimants further contend that the project administrator's letter from which Respondent Tognetti had quoted was attached to the Trustee's August 2, 1990 notice and that Respondent Tognetti had withheld the negative information.

Respondents deny that they withheld negative information from the Claimants in connection with the sale of the Bonds. Respondents contend that Claimants, as holders of other bonds of the same issue, knew and had available to them all the information concerning the Bonds. Respondents argue that Claimants referred to the Jefferson County bonds as "the bonds that the Trustee was always sending letters about." Respondents also contend that Respondent Tognetti told Claimants at the time of sale that the debt service reserve fund had been used to pay the June 1, 1990 coupon and that the Bonds were trading with no accrued interest and were trading "flat." Respondents argue that the confirmations for the transaction confirm that no accrued interest was charged and state "interest flat." Respondents also argue that Respondent Tognetti did state that the project administrator's August 1, 1990 letter indicated improved prospects for the Bonds and that he reported the statement in that letter regarding the occupancy of the facility. In addition, Respondents contend that Claimants have a history of purchasing and dealing in high risk, speculative bonds, not only with Respondents, but with other broker/dealers, and that they are knowledgeable about the risks associated with such bonds. Respondents maintain that Respondent Tognetti had every reason to believe that the transaction was suitable for Claimants and that Claimants were knowledgeable and informed.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested relief in the amount of \$4,800, which represented the difference between what Claimants paid for the Bonds and what they alleged the Bonds' market value to be at the time they submitted their claim. At the hearing, Claimants amended their claim to approximately \$7,000, to account for an alleged decrease in the Bonds' market value, and to include a claim for lost interest.

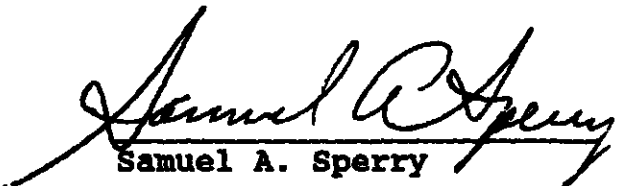
OTHER ISSUES

Prior to the hearing, Respondents requested that the arbitrator change the location of the hearing. The undersigned arbitrator reviewed said request and determined that the hearing location would remain San Francisco, as scheduled. Respondents did not attend the hearing.

AWARD

On August 23, 1991, in San Francisco, California, the undersigned arbitrator heard the controversy between the parties set forth in submissions to the arbitrator signed by Claimants on January 25, 1991 (filed with the MSRB on January 28, 1991) and by Respondents on March 1, 1991. The undersigned, 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. Respondents shall be jointly and severally liable and shall pay to Claimants \$4,800.
2. No interest shall be awarded.
3. Claimants' \$100 arbitration deposit shall be retained by the MSRB.


Samuel A. Sperry

Dated: *October 7, 1991*

STATE OF *CALIFORNIA*
COUNTY OF *ALAMEDA*

ss.:

On this *7th* day of *October* 19*91*, before me personally appeared Samuel A. Sperry 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.

